87 - 2061

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

DOROTHY COLLINS, *et al.*,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT H. BONTHIUS, JR.
Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-1900
Counsel of Record for Petitioners

QUESTION PRESENTED

A permanent injunction was issued by a federal court in a statewide class action. The injunction was, in all respects, valid and lawful. It became final. Subsequently, there was a change in a federal statute upon which the injunction was based. Thereupon, the enjoined party began to violate the injunction without first initiating judicial proceedings to obtain relief from it.

The question presented is: Does a lawfully issued final permanent injunction remain enforceable in compensatory civil contempt proceedings until such time as it is prospectively vacated in judicial proceedings, notwithstanding a post-judgment change in a statute upon which the injunction was based?

LIST OF PARTIES

The parties to the civil contempt proceedings below are petitioners, members of a certified class originally represented by named-plaintiff Dorothy Collins, and respondent Patricia K. Barry, Director of the Ohio Department of Human Services. Respondent Barry is the successor in public office to Denver L. White, an original defendant named in the underlying action.

Those not named as parties in this Court are Steven Minter, Linda Elam, and Otis Bowen. Mr. Minter was the Director of the Cuyahoga County (Ohio) Welfare Department and was the other original defendant in the underlying action. He has since been succeeded in public office. His successor was not the subject of and did not participate in the civil contempt proceedings below. Ms.

Elam and Mr. Bowen, who is the Secretary of the U.S. Department of Health and Human Services, were adverse parties in a separate, unrelated action in the United States District Court for the Southern District of Ohio. By order of the United States Court of Appeals for the Sixth Circuit, their appeals of the judgment of that court (Appeal Nos. 87-3070/3138/3139) were consolidated for submission with respondent Barry's appeal from the judgment of the United States District Court for the Northern District of Ohio (Appeal No. 86-4024) in the instant case. The question presented to this Court has no bearing on Mr. Minter, Ms. Elam or Secretary Bowen. They have no interest in the outcome of this Petition.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No._____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

DOROTHY COLLINS, et al.,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

PETITION FOR WRIT OF CERTIORARI

The petitioners, members of the certified class originally represented by named-plaintiff Dorothy Collins, pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth

Circuit, entered in the above-entitled proceedings on March 21, 1988.

OPINIONS BELOW

The judgment and opinion of the United States Court of Appeals for the Sixth Circuit are reprinted in the Appendix of this Petition (hereafter "A") at A1 and A3, respectively. The opinion of the Court of Appeals is reported at 841 F.2d 1297. The opinion of the Court of Appeals incorporates by reference the court's opinion in Bradley v. Austin, No. 87-5248 (filed March 21, 1988). That opinion, though it does not bear on the question presented in this Petition, is reprinted in the Appendix at A10. It is reported at 841 F.2d 1288.

The opinion of the United States District Court for the Northern District Court of Ohio is reprinted in the

Appendix of this Petition at A26. The opinion of the District Court is reported at 644 F. Supp. 249.

JURISDICTION

The judgment and opinion of the Sixth Circuit were entered on March 21, 1988. The jurisdiction of this Court to review the judgment of the Sixth Circuit by writ of certiorari is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This case involves civil contempt proceedings brought on May 2, 1986, to enforce a final permanent injunction. The injunction had been issued in the underlying action on January 22, 1971. On September 19, 1986, the District Court, which had issued the injunction, found respondent Barry in civil contempt for violating the terms of the injunction

and awarded compensatory damages to petitioners. The Sixth Circuit reversed, vacated and remanded for the entry of judgment for the respondent. The District Court's jurisdiction over the underlying action had been invoked under 42 U.S.C. §1983.

On January 22, 1971, the District Court certified a class of persons represented by Dorothy Collins, the named-plaintiff, and issued a permanent injunction against respondent Barry's predecessor in public office. 1/ The injunction prohibited the use of an eligibility determination procedure in the administration of the Aid to Families

---

1/ The class consists of all Ohio families in which there are both needy children and children receiving OASDI benefits. A12.

with Dependent Children ("AFDC") program, 42 U.S.C. §601, et seq., in Ohio. 2/ (A3-4, 12.) The basis upon which the District Court issued the injunction was the conflict between the state procedure and the federal social security laws. (A 4-5 and 10-11.) In particular the District Court found that the state procedure violated: provisions of the federal Social Security Title II (OASDI) program statute, 42 U.S.C. §§402(d) and 408(e); a provision of the federal AFDC program statute, 42 U.S.C. §602(a)(7); and the AFDC "availability" principle developed by decisional law. (A10-11.) The District Court, however,

---

2/ The procedure enjoined was referred to as the "family unit rule."

expressly withheld ruling on petitioners' equal protection claims. (A5.) There was no appeal.

In 1984, the federal AFDC program statute, upon which the District Court had in part based the injunction, was changed. The change was made by the Deficit Reduction Act of 1984 ("1984 DEFRA") which added paragraph (a)(38) to §402 of Title IV of the Social Security Act, 42 U.S.C. §602(a)(38) (Supp. 1987). The statutory change was implemented by a change in the federal AFDC regulations with the addition of 45 C.F.R. §206.10(a)(1) (vii)(B)(1986). The change became effective October 1, 1984.

Following the change in the federal statute and regulations, but without seeking relief from the District Court, respondent Barry began once again to

enforce the AFDC eligibility determination procedure which had been prohibited by the 1971 permanent injunction. 3/ She resumed the enjoined procedure effective October 1, 1984.

On May 2, 1986, petitioners, members of the certified class, moved the District Court to require respondent Barry to show cause why she should not be held in contempt for her violation of the 1971 permanent injunction. Petitioners sought, inter alia, the restoration of AFDC benefits lost to class members as a result of the violation of the injunction. Respondent Barry opposed the motion.

3/ The procedure when it was resumed, was referred to as the "standard filing unit rule."

On June 11, 1986, nearly twenty-one months after she had begun to violate the injunction, respondent Barry moved for relief from the injunction pursuant to Rule 60(b), Fed. R. Civ. P., based upon the change in the federal AFDC statute and regulations made by the 1984 DEFRA. Petitioners opposed the motion.

On September 19, 1986, the District Court issued an order granting petitioners' motion to show cause and denying respondent Barry's motion for relief from the 1971 permanent injunction. The District Court, inter alia, found respondent Barry in contempt for having violated the injunction, notwithstanding the 1984 DEFRA, and ordered her to restore AFDC benefits lost to class members as a result of the violation of the injunction. The

District Court noted that respondent Barry had not "previously sought relief from that [permanent injunction] order, and her enforcement of the standard filing unit rule continues unabated." (Bracketed text added.) (A19.)

On September 30, 1986, respondent Barry filed both a notice of appeal to the Sixth Circuit and a motion to stay enforcement of the order pending appeal. The District Court issued an order granting the stay on October 1, 1986. The stay, inter alia, relieved respondent Barry from the obligation of complying with the 1971 permanent injunction pending appeal.

On March 21, 1988, having stayed its proceedings pending the issuance of a decision in Bowen v. Gilliard, 107 S.Ct. 3008 (1987), the Sixth Circuit issued a

judgment and an opinion reversing and vacating the District Court's order and remanding for the entry of judgment for respondent. With respect to the questions raised by petitioners' motion to show cause, the Sixth Circuit held that the District Court had erred in finding respondent Barry in contempt and in awarding the restoration of the AFDC benefits to class members as a remedy. It determined that respondent Barry had violated the 1971 permanent injunction but that the injunction had been invalidated by the 1984 DEFRA. It further found that petitioners were not entitled to the restoration of lost AFDC benefits because they were not entitled to them under the federal AFDC statute as changed by the 1984 DEFRA.

REASONS FOR GRANTING THE WRIT

I.

This case presents important public policy questions, not yet resolved by this Court, concerning the power of a federal court to enforce a lawfully issued final order in compensatory civil contempt proceedings where there has been a post-judgment change in a statute upon which the order was based.

The power of a federal court to enforce its lawful orders in contempt proceedings is a matter of important public policy. It is a power which is important to the courts and to parties alike. W.R. Grace and Co. v. Local Union 759, 461 U.S. 757 at 766 (1983).

The Sixth Circuit has, in the instant case, substantially and incorrectly restricted that civil contempt power. It has done so by precluding the enforcement of a final unvacated permanent injunction after a post-judgment change in a statute upon which the injunction was based, and

by denying compensatory damages to those whose rights under that injunction were violated. It has thus relegated a lawfully issued order to the status of an unlawfully issued order.

The Sixth Circuit has, by its decision, encouraged enjoined parties to do what this Court has warned against. It has encouraged them to avoid returning to court to seek relief from judgment when a change in law occurs. It has encouraged them, instead, to judge their own cases and to determine for themselves the continuing force of otherwise valid final orders. The Sixth Circuit has also placed on the parties who properly obtained such orders the duty of discovering violations and of initiating proper judicial proceedings to seek to enforce such orders. However, it has denied

those same parties the ability to obtain compensatory damages for violations of their fully adjudicated rights under the valid final orders. Finally, the Sixth Circuit has seriously limited the authority of the issuing courts to determine the effect of the claimed change in law upon their valid final orders and to insist upon obedience to them until then.

The Sixth Circuit's decision has had serious ramifications for petitioners and will have serious ramifications for other parties in other cases. Petitioners have been denied compensatory damages despite the clear violation of their rights under the 1971 permanent injunction. The results will be serious also for other parties likewise protected by fully adjudicated lawfully issued final orders. Their adverse parties also are now

virtually free to violate such orders when a post-judgment change in law occurs (e.g., a change in the statutory, regulatory or decisional law underlying the injunction).

Neither parties ostensibly protected by such orders nor issuing courts can rest assured that orders will be obeyed until prospectively modified or vacated. Neither may rely on their ability to fully enforce such orders since enforcement, under the Sixth Circuit's decision, depends upon the effect of post-judgment changes. Only the more problematic criminal contempt sanctions remain certain in such cases. But while criminal contempt will provide a remedy for the issuing courts in some cases, it will not provide compensation for protected parties.

The question presented herein, and

argued infra, has not been addressed by this Court. However, in other contempt cases, this Court has made its approach to contempt plain. E.g., GTE Sylvania, Inc. v. Consumers Union, Inc., 445 U.S. 375 (1980); Pasadena City Bd. of Ed. v. Spangler, 427 U.S. 424 (1976); Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968); McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949); and United States v. Swift & Co., 286 U.S. 106 (1932). That approach requires continuing obedience to lawfully issued final orders and permits the award of compensatory damages for violations of such orders. That approach would settle this question and would lead to the reversal of the Sixth Circuit's decision.

It is appropriate that this question be resolved by this Court in this case because petitioners have been erroneously

deprived of their compensatory damages and because the Sixth Circuit has so severely restricted the civil contempt power of a federal court.

II.

A lawfully issued final permanent injunction remains valid and enforceable in civil contempt until it is prospectively vacated in judicial proceedings, notwithstanding a post-judgment change in a statute upon which it was based. The Sixth Circuit erred in its decision to the contrary.

In 1971 the District Court lawfully issued a permanent injunction. The injunction was not appealed and became final. However, in 1984 respondent Barry resumed the practice prohibited by the injunction because of a change in the federal AFDC statute, a statute upon which the injunction was based. Respondent Barry did not initiate proceedings to vacate the injunction until 1986, after petitioners had filed

their motion to show cause. 4/ The District Court granted petitioners' motion. But the Sixth Circuit reversed.

The principles governing civil contempt, and the doctrines of res judicata and stare decisis, make it plain that the rationale upon which the Sixth Circuit

---

4/ The legal effect of the change in law was far from clear when respondent filed her motion for relief from judgment. A number of courts had already ruled that the 1984 DEFRA had not changed the law as it related to the prohibited AFDC eligibility determination procedure; a number of other courts had ruled otherwise. Compare Frazier v. Pingree, 612 F. Supp. 345 (M.D. Fla. 1985); Gorrie v. Heckler, 624 F. Supp. 85 (D. Minn. 1985); White Horse v. Heckler, 627 F. Supp. 848 (D.S.D. 85); Gibson v. Sallee, 648 F. Supp. 54 M.D. Tenn. 1986) with Oliver v. Ledbetter, 624 F. Supp. 325 (N.D. Ga. 1985); Creaton v. Heckler, 625 F. Supp. 26 (C.D. Cal. 1985); Ardister v. Mansour, 627 F. Supp. 641 (W.D. Mich. 1986); Shonkwiler v. Heckler, 628 F. Supp. 1013 (S.D. Ind. 1985); Sherrod Hegstrom, 629 F. Supp. 150 (D. Ore. 1985). (The subsequent history of these cases is set forth in the Table of Authorities, supra.)

based its reversal is unsupported and unsupportable. The Sixth Circuit's rationale is that an otherwise valid injunction becomes invalid by operation of law when there is a post-judgment change in the law upon which the injunction was based. Under the Sixth Circuit's rationale the injunction becomes instantly invalid and unenforceable by virtue of such a change, and the enjoined party becomes free to violate to the injunction without need of any judicial proceedings.

The Sixth Circuit's rationale encroaches upon the general contempt rule, fully applicable here, that an enjoined party is obliged to obey a final injunction issued by a court with subject matter and personal jurisdiction unless and until the injunction is modified or vacated in orderly judicial proceedings.

W.R. Grace, 461 U.S. at 766; GTE Sylvania, 445 U.S. at 386; Pasadena, 427 U.S. at 438-440; Maness v. Meyers, 419 U.S. 449, 458-459 (1975); Carroll, 393 U.S. at 179; Walker v. City of Birmingham, 388 U.S. 307, 314-321 (1967); McComb, 336 U.S. at 192; Howat v. State of Kansas, 258 U.S. 181, 189-190 (1922); Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 436-439, 450-451 (1911).

Under the general rule, enjoined parties are warned against judging for themselves whether such an injunction should be continued, despite their serious questions about whether it should (e.g., because of questions raised by post-judgment changes in statutory or decisional law). Enjoined parties are required to utilize orderly judicial proceedings to seek and obtain

appropriate relief. They are on notice that disobedience of a lawfully issued final injunction is contempt and will subject them to serious sanctions. There are sound reasons for this. Respect for the judicial power demands obedience to lawful orders and the adjudicated rights of the adverse party require protection.

The Sixth Circuit's rationale also incorrectly applies the narrow civil contempt exception. This exception makes unenforceable an order which was invalidly issued. An invalidly issued order is one which was issued by a court without jurisdiction (subject matter or personal) or one which was erroneously issued in the first place. In such circumstances, the right to remedial civil contempt relief falls with the invalid order. United States v. United

Mine Workers of America, 330 U.S. 258, 295 (1947); Worden v. Searls, 121 U.S. 14, 25-26 (1887).

This narrow exception applies in circumstances far different from those here. It applies in circumstances in which the party obtaining the order was not entitled to it in the first place because of such a defect. But it has not been applied in a case such as this in which the injunction was correctly issued by a court with both subject matter and personal jurisdiction and which was final long before it was violated. It is plain that this exception should not apply in such a case. E.g., W.R. Grace, 461 U.S. at 766; GTE Sylvania, 445 U.S. at 386; Pasadena, 427 U.S. at 438-440; Carroll, 393 U.S. at 179, McComb, 336 U.S. at 192. The Sixth Circuit, however, has now

applied this narrow exception to defeat a validly issued permanent injunction. It has, in effect, widened this exception.

The Sixth Circuit's rationale also undermines the doctrines of res judicata and stare decisis because it fails to give finality to a fully adjudicated, lawfully issued, final order. Under these doctrines, such an order is final subject to prospective modification or vacation. But, unless and until it is, such an order has finally adjudicated and fixed the rights of the parties to it. Pasadena, 427 U.S. at 432; System Federation No. 91, Railway Employees' Dept. v. Wright, 364 U.S. 642, 647-648 (1961); Maggio v. Zeitz, 333 U.S. 56, 68-69, 74-75 (1948); United Mine Workers, 330 U.S. at 259; Oriel v. Russell, 278 U.S. 358 (1929). Such an order is not

subject to what could amount to a collateral attack in the context of civil contempt proceedings. Civil contempt proceedings do not and should not be used as an occasion to reconsider the legal basis of the order which is said to have been disobeyed. A court's power to enjoin should not be treated as so inconclusive that rights fixed by the order remain the subject of continuing dispute. These well-settled principles of res judicata and stare decisis are ignored by the Sixth Circuit's rationale which, in effect, treats an otherwise final injunction as interlocutory in post-judgment civil contempt proceedings.

The principles governing the prospective modification of otherwise final orders do not justify the Sixth Circuit's determination. Res judicata

and stare decisis give finality, but not immutability, to a lawfully issued, final order. Balanced with those doctrines is the authority of the court to prospectively modify or vacate its injunction based upon changed circumstances (e.g., changes in statutory, regulatory or decisional law). Pasadena, 427 U.S. at 437-438; System Federation, 364 U.S. at 647-648; Swift, 286 U.S. at 114-115; Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855). But post-judgment changes do not by themselves relieve an enjoined party from its obligation to continue to obey a lawfully issued final injunction. Only the courts may grant relief from judgment. This is so despite any legitimate questions the enjoined party may have about whether the injunction

should be continued.

The proper means by which to question the continuing vitality of an order is by judicial proceedings to modify or vacate it; not by privately determining the law and relieving oneself from the order. The latter course makes light of the judicial power and has been condemned unequivocally. E.g., Pasadena, 427 U.S. at 438-440; Carroll, 393 U.S. at 179; Walker, 388 U.S. at 315; Maggio, 333 U.S. at 58; McComb, 336 U.S. at 192; United Mine Workers, 330 U.S. at 290; Howat, 258 U.S. at 189-190; Gompers, 221 U.S. at 436-439, 450-451. Post-judgment proceedings, though, do not bring into question the past validity of a lawfully issued final injunction, nor do they present the opportunity to reverse it under the guise of adjusting it. Maggio,

333 U.S. at 68-69; United Mine Workers, 330 U.S. at 259; Oriel, 278 U.S. 358. The Sixth Circuit has treated the continuing authority of the court to prospectively change its injunction as merely an alternative to the exercise of self-help by the respondent. That is not correct.

Nor is the Sixth Circuit's decision supported by the precedents upon which it relies.5/ Those precedents support only the narrow civil contempt exception, discussed supra, which bars the enforcement of invalidly issued orders. The

---

5/ The precedents relied upon by the Sixth Circuit are: United States v. Campbell, 761 F.2d 1181 (6th Cir. 1985); Ager v. Jane C. Stormont Hospital & Training School for Nurses, 622 F.2d 496 (10th Cir. 1980); Latrobe Steel Co. v. United Steel Workers of America, 545 F.2d 1336 (3rd Cir. 1976); Norman Bridge Drug Co. v. Banner, 529 F.2d 822 (5th Cir. 1976). These do not support its holding.

precedents cited do not support the Sixth Circuit's determination that a lawfully issued, final and otherwise valid permanent injunction becomes invalid per se upon a post-judgment change in the law upon which it was based.

In the instant case the legally correcty result was reached by the District Court which recognized the continuing force and effect of its 1971 final permanent injunction, notwithstanding the post-judgment change in the federal AFDC statute, and which granted petitioners' motion to show cause. That result is consistent with this Court's approach. It also is consistent with the approach taken by other lower courts. E.g., Dowell by Dowell v. Board of Ed. of Oklahoma, 795 F.2d 1516, 1521-22 (10th Cir. 1986); Fortin v. Commissioner of

Mass. Dept. of Public Welfare, 692 F.2d 790 (1st Cir. 1982); Halderman v. Pennhurst State School & Hospital, 673 F.2d 628, 636-639 (3rd Cir. 1982), reh'g. denied Mar. 23, 1982, cert. denied, 465 U.S. 1038 (1984); Class v. Nortin, 507 F.2d 1058, 1059-60 (2nd Cir. 1974); Duracell, Inc. v. Global Imports, Inc., 660 F. Supp. 690, 692-694 (S.D.N.Y. 1987). The judgment and opinion of the Sixth Circuit to the contrary are in error.

III.

A court may, in civil contempt proceedings, compensate parties protected by a lawfully issued final permanent injunction for violation of their rights under it which occur between the time there is a post-judgment change in a statute upon which the injunction was based and the time it is prospectively vacated in judicial proceedings. The Sixth Circuit erred in its decision to the contrary.

Having granted petitioners' motion to

show cause, the District Court ordered respondent Barry to restore to members of petitioners' class the AFDC benefits to which they were entitled under the 1971 permanent injunction. 6/ This included benefits reduced or terminated in violation of the injunction. Respondent was ordered to restore benefits lost since October 1, 1984, the effective date of her resumption of the prohibited AFDC eligibility determination practice.7/ The Sixth Circuit, however, determined

---

6/ The exact number of class members who are entitled to restored AFDC benefits is yet to be determined. However, it is likely that there are hundreds.

7/ The period during which respondent Barry was in contempt of the permanent injunction (the period for which she is obligated to restore lost AFDC benefits) began October 1, 1984, and ended October 1, 1986, the date on which the District Court stayed her obligation to comply with the injunction pending appeal.

that petitioners were not entitled to these compensatory damages because they were not entitled to AFDC benefits under the federal AFDC statute as changed by the 1984 DEFRA, notwithstanding their entitlement under the injunction.

The Sixth Circuit has seriously and incorrectly limited the right to compensatory damages in civil contempt proceedings. It has here denied the right to damages for violations of rights under a final injunction which was lawfully issued by a court with jurisdiction. Its decision misapprehends both the source of the right to compensatory damages and the reasons damages are denied in those cases which are subject to the narrow civil contempt exception, discussed supra. Further, its decision incorrectly permits the

relitigation of rights already fully adjudicated.

The Sixth Circuit incorrectly identified the federal AFDC statute changed by the 1984 DEFRA as the source of petitioners' right to compensatory damages. But, the source of the right to compensatory damages is the injunction in which rights have been adjudicated and fixed, subject to prospective modification. The rights once fixed in a lawfully issued injunction are no longer dependent upon statute or on common law, or any change in them. McComb, 336 U.S. at 191, 193; Maggio, 333 U.S. at 68; United Mine Workers, 330 U.S. at 303; Gompers, 221 U.S. at 441, 448-449; Dowell, 795 F.2d at 1521; Latrobe, 545 F.2d at 1343-1346.

The twin purposes of civil contempt, then, are to enable the court to enforce

compliance with its lawful final order and to compensate parties whose rights adjudicated under it have been violated. The compensatory purpose provides a remedy by way of damages for violations of adjudicated rights. United Mine Workers, 330 U.S. at 304; Worden, 121 U.S. 14; Latrobe, 545 F.2d at 1345-46. Proof of the violation of the order thus entitles the protected party to compensation for the violation of rights embodied in the order. In this respect, civil contempt proceedings for compensatory damages are in the nature of private actions for damages, but with rights having been fixed by the injunction, not by a statute or common law. Because the injunction was the source of petitioners' right to damages, enforcing the injunction does not create rights, as

the Sixth Circuit suggested. Instead, it enforces rights long since adjudicated.

The rule relied on by the Sixth Circuit, that the right to remedial relief falls with an invalid injunction, does not support its determination here. The reason there is no right to compensatory damages for violation of an erroneously issued injunction or for violation of one issued by a court without jurisdiction, is that the party ostensibly protected was not entitled to the order in the first place. United Mine Workers, 330 U.S. at 304; Worden, 121 U.S. 14; Latrobe, 545 F.2d at 1346. But that sound logic is inapplicable where, as here, the protected party was entitled to the order. That logic dictates that parties protected by a lawfully issued final

permanent injunction may be awarded compensatory damages because such parties were entitled to the injunction in the first instance and continue to be entitled until the injunction is vacated in judicial proceedings. The vacation of the injunction relieves the enjoined party of the duty to continue to comply with the executory aspects of the injunction but it does not deprive the protected parties of their ability to be compensated for violations of rights which have already accrued under the injunction.

Finally, denying parties the ability to obtain compensatory damages for violations of their rights under lawfully issued final injunctions is not consistent with the doctrines of res judicata and stare decisis, discussed

supra. These principles require that there be a remedy for rights once properly fixed. To deny that right, as the Sixth Circuit has done, is to make those principles meaningless for the court and for the parties; rights once lawfully fixed become unfixed and subject to relitigation in the context of the civil contempt action.

In support of its determination, the Sixth Circuit relied on footnote 12 in this Court's opinion in Gilliard, 107 S.Ct. at 3015. The reliance is misplaced. In Gilliard, this Court did not purport to address the authority of the lower court to award compensatory damages in a civil contempt proceeding; it was not a contempt case.

In the instant case the legally correct result was reached by the

District Court which awarded compensatory civil contempt damages to petitioners for the violation of rights adjudicated by, fixed in and accrued under the 1971 final permanent injunction. The judgment and opinion of the Sixth Circuit to the contrary are in error.

CONCLUSION

For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT H. BONTHIUS, JR.
Legal Aid Society of
Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-1900

Counsel of Record for
Petitioners

June, 1988

87-2061

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

DOROTHY COLLINS, *et al.*,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

ROBERT H. BONTHIUS, JR.
Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-1900
Counsel of Record for Petitioners

TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NOS. 86-4024
87-3070
87-3138
87-3139

DOROTHY COLLINS, on behalf of her minor children; James Collins, Dorothy Collins and Warren Collins, individually and on behalf of all others similarly situated,

Plaintiffs-Appellees (86-4024),

LINDA ELAM,

Plaintiff-Appellee (87-3070/3139),
Cross Appellant (87-3138),

v.

PATRICIA K. BARRY, Director of the Ohio Department of Human Services,

Defendant-Appellant (86-4024/87-3070),
Cross Appellee (87-3138),

OTIS BOWEN, individually and in his official capacity as Secretary of Health and Human Services,

Defendant-Appellant (87-3139).

Before: MILBURN and GUY, Circuit Judges; and CONTIE, Senior Circuit Judge.

J U D G M E N T

ON APPEAL from the United States District Courts for the Northern and Southern Districts of Ohio.

THIS CAUSE came on to be heard on the records from the said district courts and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court that the judgments of the said district courts in this case be and the same are reversed and vacated; and the cases are remanded to the respective district courts with instructions to enter judgments for the defendants.

Each party is to bear its own costs on appeal.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

_____

Clerk

Nos. 86-4024; 87-3070/3138/3139

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DOROTHY COLLINS, ON BEHALF OF HER MINOR CHILDREN, JAMES COLLINS, DOROTHY COLLINS AND WARREN COLLINS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Plaintiff-Appellee
(86-4024),

LINDA ELAM,
Plaintiff-Appellee
(87-3070/3139),
Cross-Appellant
(87-3138),

v.

PATRICIA K. BARRY, DIRECTOR OF THE OHIO DEPARTMENT OF HUMAN SERVICES,
Defendant-Appellant
(86-4024, 87-3070)
Cross-Appellee
(87-3138),

OTIS BOWEN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant-Appellant
(87-3139).

ON APPEAL from the United States District Courts for the Northern and Southern District of Ohio.

Decided and Filed March 21, 1988

Before: MILBURN and GUY, Circuit Judges; and CONTIE, Senior Circuit Judge.

MILBURN, Circuit Judge. In these consolidated appeals, defendants-appellants Patricia Barry, Director of the Ohio Department of Human Services ("Director"), and Otis Bowen, Secretary of Health and Human Services ("Secretary"), appeal the orders of the district courts granting preliminary and permanent injunctions and holding that the policies of the defendants implementing the Aid to Families with Dependent Children ("AFDC") program family filing unit provision of the Deficit Reduction Act of 1984 ("DEFRA") are violative of federal law. For the reasons that follow, we reverse the judgments of the district courts and vacate the injunctions.

I.

A.

No. 86-4024—Northern District of Ohio

One of the consolidated appeals originates out of a class action filed by plaintiff Collins in the district court on October 15, 1969. In that action, Collins claimed that the Director's inclusion of Old Age, Survivors, and Disability Insurance ("OASDI" or "Title II") benefits and recipients within the standard filing unit used to determine AFDC eligibility was contrary to federal law and therefore should be enjoined. On January 22, 1971, the district court certified Collins' action as a class action, found for plaintiffs and issued an injunction prohibiting the complained of actions.

On May 2, 1986, plaintiff Collins filed a motion to show cause alleging that the Director had unjustifiably violated the

injunction issued on January 22, 1971, by again considering OASDI benefits and recipients as part of the AFDC filing unit. The Director claimed that statutory changes enacted by DEFRA undercut the basis for the injunction, and therefore it was no longer valid. Accordingly, on these grounds, the Director filed on June 11, 1986, a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Since both motions required the district court to construe 42 U.S.C. § 602(a)(38), the motions were decided jointly.

On September 19, 1986, the district court issued an order finding the Director in contempt of its January 22, 1971, injunction. The Director's motion for relief from judgment was denied. *Collins* v. *Barry*, 644 F. Supp. 249 (N.D. Ohio 1986). On September 30, 1986, the Director filed a notice of appeal and a motion to stay enforcement of the order pending appeal to this court. The stay was granted.

B.

Nos. 87-3070; 87-3138; 87-3139—Southern District of Ohio

On February 12, 1986, plaintiff Elam filed an action against the Director in the district court for herself and as next friend for her daughter, Tina Brayton. Among other things, Elam alleged that the state had incorrectly counted the OASDI benefits received by Tina, as a coresident sibling, in determining the AFDC eligibility of her household. On March 13, 1986, the state impleaded the Secretary as a party defendant, and on March 27, 1986, Elam filed an amended complaint in which she asserted that the Secretary's regulatory guidelines were contrary to federal law. Elam also sought certification of a class and both preliminary and permanent injunctive relief.

The Secretary and the Director filed memoranda in opposition to Elam's motion to certify and her motion for prelimi-

nary and permanent injunction. Subsequently, the district court denied Elam's motion to certify her cause as a class action, but, relying on *Collins*, granted the request for injunctive relief. *Elam v. Barry*, 656 F. Supp. 140 (S.D. Ohio 1986). Judgment was entered on December 31, 1986.

On January 16, 1987, the Director moved to stay enforcement of the district court's order pending appeal and filed its notice of appeal, and the district court granted the Director's motion to stay enforcement on January 21, 1987. The Secretary filed a timely notice of appeal, and plaintiff Elam likewise filed a timely notice of appeal from the court's denial of class certification.

On February 23, 1987, this court *sua sponte* entered an order staying proceedings in these consolidated appeals until the United States Supreme Court rendered a decision in *Gilliard v. Kirk*, Supreme Court No. 86-564. That opinion was rendered on June 25, 1987. *Bowen v. Gilliard*, 107 S. Ct. 3008 (1987).

II.

A.

Plaintiffs initially challenge the state and federal regulations implementing DEFRA's redefinition of the AFDC family filing unit, 42 U.S.C. § 602(a)(38). In *Bradley v. Austin*, slip op. No. 87-5248, also decided today, the same federal statute and regulations and virtually identical state regulations were challenged. In *Bradley*, where the same statutory arguments were raised, we held that the regulations are consistent with the statute authorizing them and with federal law governing Title II social security benefits. *Bradley* controls our decision in this case on these issues.[1]

---

[1]As we hold that the district court erroneously granted injunctive relief, we need not reach plaintiff Elam's contention in her cross-appeal that the district court erroneously denied her class certification.

B.

However, the Collins case comes to us in a different procedural posture than *Bradley* and has an additional issue for this court to resolve. Plaintiff Collins contends that if this court should find, as it does, that the regulations in question do not violate federal law, we should still affirm the district court's finding that the Director was in contempt of court. Collins argues that even if the law upon which the injunction was based had changed, the Director was still bound by the injunction until it was modified or vacated by the court entering the injunction, and therefore was properly found in contempt and was properly ordered to restore benefits reduced or terminated as a result of the regulatory change.

While the invalidity of a court order is generally not a defense in a criminal contempt proceeding alleging disobedience of the order, *Fernos-Lopez v. United States District Court*, 599 F.2d 1087, 1091 (lst Cir.) (per curiam), *cert. denied*, 444 U.S. 931 (1979), "a finding of civil contempt is invalidated if the underlying order is invalidated." *Squillacote v. Local 248, Meat & Allied Food Workers*, 534 F.2d 735, 746 (7th Cir. 1976); *see also Ager v. Jane C. Stormont Hospital and Training School for Nurses*, 622 F.2d 496, 499 (10th Cir. 1980). "A party held only in civil contempt by way of compensation to his adversary will be absolved of liability if the court order was invalid or erroneous[, as] [t]he adversary should realize no gain from orders to which he was not entitled." *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822, 828 (5th Cir. 1976); *see United States v. Campbell*, 761 F.2d 1181, 1185 (6th Cir. 1985) ("a party cannot be held in civil contempt of an order that is itself not valid.").

"[T]he objective of a civil contempt decree is to benefit the complainant." *Latrobe Steel Company v. United Steelworkers of America*, 545 F.2d 1336, 1343 (3d Cir. 1976). Thus, the distinction between civil and criminal contempt should be illustrated.

> The primary purpose of a criminal contempt is to punish defiance of a court's judicial authority. Accordingly, the normal beneficiaries of such an order are the courts and the public interest. On the other hand, civil contempt is characterized by the court's desire "to *compel* obedience of the court order or to compensate the litigant for injuries sustained from the disobedience." The remedial aspects outweigh the punitive considerations. Thus, the primary beneficiaries of such an order are the individual litigants. The judicial system benefits to a lesser extent.

Ager, 622 F.2d at 499-500 (citations omitted) (emphasis in original).

In this case, plaintiff Collins and her class were not damaged by the defendant's actions in violation of the injunction. On October 1, 1984, as required by DEFRA, the Director amended Ohio law to conform with the requirements of 42 U.S.C. § 602(a)(38). As of that date, plaintiff Collins and her class were no longer entitled to benefits as determined by the prior law. Therefore, they were not harmed as a result of the Director's action, since, under the law, they were receiving all the benefits to which they were entitled. As civil contempt seeks to remedy a deprivation or a loss, and not to create additional rights, the district court erred in finding defendant Barry in contempt and awarding a restoration of reduced or terminated benefits as a remedy. *See Gilliard*, 107 S. Ct. at 3015, n.12 ("ruling that the DEFRA amendment is constitutionally valid requires reversal of both the district court's award of prospective relief and its award of retroactive relief.").

III.

Accordingly, the judgments of both district courts are REVERSED and VACATED. We REMAND the cases to the

respective district courts from which these appeals arose with instructions to enter judgments for the defendants.

No. 87-5248

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PATSY BRADLEY, ON BEHALF OF HERSELF AND HER MINOR CHILDREN, AND ALL OTHERS SIMILARLY SITUATED,
Plaintiff-Appellant,

v.

E. ALLEN AUSTIN, OFFICIAL CAPACITY, SECRETARY CABINET FOR HUMAN RESOURCES; AND OTIS BOWEN, SECRETARY HEALTH AND HUMAN SERVICES, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Eastern District of Kentucky.

Decided and Filed March 21, 1988

Before: MILBURN and GUY, Circuit Judges; and CONTIE, Senior Circuit Judge.

MILBURN, Circuit Judge. Plaintiff-appellant appeals from the summary judgment granted by the district court for defendants in this action challenging the Aid to Families with Dependent Children ("AFDC") program regulations enacted

by the Secretary of Health and Human Services ("Secretary") and the State of Kentucky implementing the Deficit Reduction Act of 1984 ("DEFRA"). For the reasons that follow, we affirm.

I.

Plaintiff initiated this action on August 15, 1986, seeking class-wide injunctive and declaratory relief with respect to state and federal implementation of the AFDC filing unit provision of DEFRA, 42 U.S.C. § 602(a)(38) (Supp. 1987). The complaint asserted that 45 C.F.R. § 206.10(a)(1)(vii)(B) (1986) and the corresponding Kentucky state regulations[1] contravene the Social Security Act and violate the Federal Constitutional rights of the proposed plaintiff class. Plaintiff also moved for a preliminary injunction. On September 16, 1986, the Secretary filed its opposition to the motion for preliminary injunction and moved to dismiss or, in the alternative, for summary judgment. The State of Kentucky filed similar motions on September 22, 1986.

A preliminary injunction hearing was held on September 19, 1986, following which the district court concluded that the case was amenable for summary disposition and therefore combined consideration of the preliminary injunction with a review on the merits. The certification of a class was taken under advisement. Thereafter, plaintiff filed a cross-motion for summary judgment on November 13, 1986.

On January 5, 1987, the district court granted summary judgment for the state and federal defendants, adopting as its opinion the reasons stated in the defendants' memorandum. Plaintiff filed a timely notice of appeal on March 2, 1987.

Proceedings in this court were stayed pending the disposi-

---

[1] *See* 904 Ky. Admin. Regs 2:006 and 2:016 (1986).

tion by the United States Supreme Court of *Bowen v. Gilliard*, No. 86-509, and *Flaherty v. Gilliard*, No. 86-564. The Supreme Court consolidated these cases and rendered a decision upholding DEFRA's AFDC filing unit rule on June 25, 1987. *Bowen v. Gilliard*, 483 U.S. _, 107 S. Ct. 3008 (1987).

At the pertinent time period, the Bradley household, comprised of plaintiff Mrs. Bradley and her four daughters, received $750.00 per month in governmental benefits. Mrs. Bradley received $336.00 per month in Supplemental Security Income ("SSI"), and three of her four daughters received a combined $414.00 per month in Old Age, Survivors, and Disability Insurance ("OASDI") benefits as minor children of a disabled wage earner. Mrs. Bradley sought an additional $140.00 per month in AFDC benefits for her remaining daughter, a half-sibling of her other children.

Plaintiff Mrs. Bradley's request for benefits was denied because the Secretary's AFDC regulations implementing the family filing unit provision of DEFRA require the state agency to include in the application all children in the household. Since Mrs. Bradley was an SSI recipient, she was explicitly excluded from the unit and her income disregarded. *See* 42 U.S.C. § 602(a)(24) (Supp. 1987). However, the OASDI benefits of three of her children rendered their half-sister ineligible because the accountable family income was in excess of the standard of need for a unit of four persons as determined by the State of Kentucky.

On appeal, plaintiff argues that (1) the federal and state AFDC regulations are in irreconcilable conflict with Title II of the Social Security Act; (2) the federal regulations violate the equal protection and due process rights of the Title II children; and (3) the federal regulations violate the equal protection and due process rights of the Title II representative payees.

II.

A. *Statutory Construction*

The AFDC program, authorized under Title IV-A of the Social Security Act, 42 U.S.C. §§ 601-15 (1983 and Supp. 1987), is a cooperative federal-state effort established by Congress in 1935 under which grants are made to states to enable them, as far as practicable under the circumstances of each state, to furnish financial assistance and services to needy, dependent children of the parents or relatives with whom they are living. 42 U.S.C. § 602 (1983 and Supp. 1987); *see Heckler v. Turner*, 470 U.S. 184 (1985); *King v. Smith*, 392 U.S. 309 (1968). Under the program, the federal government provides financial participation to match the contribution of a participating state, which administers the program and is required to submit for federal approval a "state plan" in conformity with the federal statute and implementing regulations. 42 U.S.C. § 603 (1983 and Supp. 1987); *see* 45 C.F.R. § 201 (1986).

States "are given broad discretion in determining both the standard of need and the level of benefits[,]" exercising their responsibility given all the circumstances of a particular state. *Shea v. Vialpando*, 416 U.S. 251, 253 (1974); *see also Rosado v. Wyman*, 397 U.S. 397, 408-09 (1970). Each state AFDC plan specifies a "statewide standard of need, which is the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea*, 416 U.S. at 253. "Both eligibility for AFDC assistance and the amount of benefits to be granted an individual applicant are based on a comparison of the State's standard of need with the income and resources available to that applicant." *Id.*

Prior to 1984, there was no requirement that all coresident family members be included in the family filing unit for determining AFDC eligibility. *Gilliard*, 107 S. Ct. at 3011. Indeed, in anticipation of the receipt of income such as social security

benefits, a family member could be selectively removed from the AFDC filing unit, which resulted in larger benefits for the family as a whole. *Id.* States were precluded from considering income or resources of excluded individuals in determining eligibility and benefits for the unit, except certain kinds of income from enumerated parental, spousal, and step-parent sources.

Title II of the Social Security Act creates several programs under which an individual may receive benefits from a social security trust fund. All of the programs are based upon the earnings record of either the individual or a related wage earner. 42 U.S.C. §§ 401-33 (1983 and Supp. 1987). A child is generally entitled to receive OASDI benefits if he or she (1) is the child of an "insured" person within the meaning of the Act; (2) is or was dependent on the insured; (3) applies; (4) is unmarried; and (5) unless disabled, is under eighteen years of age or older than eighteen years of age but still a full-time elementary or secondary student. 42 U.S.C. § 402(d) (Supp. 1987); *see Childress v. Secretary of Health & Human Services*, 679 F.2d 623, 624 (6th Cir. 1982).

Pursuant to 42 U.S.C. § 405(j)(1) (Supp. 1987), Title II payments may be paid directly to the beneficiary or may be paid to persons (sometimes referred to as "representative payees") other than the Title II recipient. Section 405(j)(1) provides:

> When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

Once payment to a representative payee is elected, the representative payee must use the OASDI benefits for the sole benefit of the beneficiary. *See* 20 C.F.R. §§ 404.2035-404.2045 (1987). Otherwise, the representative

payee is subject to both criminal and civil liability. 42 U.S.C. § 408(e) (1983 and Supp. 1987); *see also* 20 C.F.R. § 404.2041 (1987).

DEFRA made several changes in the AFDC program, including one involving the composition of a filing unit for AFDC assistance.[2] This amendment was initially proposed by Health and Human Services Secretary Heckler, and the language of the provision that ultimately passed is virtually identical to the Secretary's proposed amendment. *Gilliard*, 107 S. Ct. at 3012. The Secretary's proposed amendment initially became part of the draft of the Omnibus Reconciliation Act of 1983. Subsequently, the proposal was incorporated into the Senate version of DEFRA. *Id.* at 3012-13.

In 1984, the Senate Committee on Finance provided the following explanation of the amendment:

> Present Law
>
> There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. For example, a family might choose to exclude a child who is receiving *social security* or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child. . . .
>
> Explanation of Provision
>
> The provision approved by the Committee would require States *to include* in the filing unit the parents

[2] "The Senate Finance Committee estimated that the change would save $455,000,000 during the next three fiscal years." *Bowen v. Gilliard*, 107 S. Ct. 3008, 3013 (1987).

> and all dependent minor siblings . . . living with a child who applies for or receives AFDC.
>
> *This change* will end the present practice whereby families exclude members with income in order to maximize family benefits, and *will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole.*

Bowen v. Gilliard, 107 S. Ct. at 3013 (quoting S. Rep. No. 169, 98th Cong., 2d Sess., Vol. 1, at 980) (emphasis supplied). *See also* H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1407, *reprinted in* 1984 U.S. Code Cong. & Admin. News 697, at 2095. The Conference version of DEFRA was identical to the Senate version with one added modification, *i.e.*, "a monthly disregard of $50 of child support received by a family [was] established." *Id.*; *see Gilliard,* 107 S. Ct. at 3013.

Section 2640(a) of DEFRA, as codified, provides:

> A State plan for aid and services to needy families with children must-
>
> . . .
>
> (38) provide that in making the determination under paragraph (7) [concerning income and resources] with respect to a dependent child in applying paragraph (8) [concerning certain disregards of income], *the State agency shall . . . include* --
>
> (A) any parent of such child, and
>
> (B) any brother or sister of such child, . . .
>
> if such parent, brother, or sister is living in the same house as the dependent child, and *any income of or available* for such parent, brother, or sister shall be included in making such determination and apply-

> ing such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter)[.]

42 U.S.C. § 602(a)(38) (Supp. 1987) (emphasis supplied). Thus, Congress clearly intended to prohibit the prior practice of excluding siblings with income and resources from the family filing unit in order to allow other family members to qualify for AFDC benefits. The Secretary's regulations implementing the congressional redefinition of the family filing unit provide that in determining AFDC eligibility, the income of any natural or adoptive parents, step-parents, and blood-related or adoptive brother or sisters *must* be included in determining family eligibility.[3]

Plaintiff argues, however, that the Secretary's regulations implementing DEFRA's redefinition of the family filing rule are in direct conflict with Title II, 42 U.S.C. § 401 *et seq.*, as the requirement that OASDI benefits and beneficiaries be included in the AFDC family filing unit requires the representative payee or the Title II recipient to use such benefits not only for the benefit of the named beneficiary, but for other family members as well. Therefore, plaintiff argues that the regulations force the representative payee to use OASDI benefits for the entire family, thus forcing the representative payee, at the risk of criminal and civil liability, to violate

---

[3]45 C.F.R. § 206.10(a)(1)(vii) (1986) provides:

> For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> (A) Any natural or adoptive parent, or stepparent . . .; and
>
> (B) Any blood-related or adoptive brother or sister.

the regulations limiting OASDI benefits solely for the support of the named beneficiary.[4]

In determining the meaning of legislation, we must first look to the plain language of the statute itself. *McBarron v. S & T Indus., Inc.* 771 F.2d 94, 97 (6th Cir. 1985). If we find that the statutory language is unambiguous, then that language is regarded as conclusive unless there is a clearly expressed legislative intent to the contrary. *United States v. Premises Known as 8584 Old Brownsville Road, Shelby County, Tennessee,* 736 F.2d 1129, 1130 (6th Cir. 1984). If we find that the statute is ambiguous, we then look to its legislative history. *Blum v. Stenson,* 465 U.S. 886, 896 (1984).

In the present case, however, 42 U.S.C. § 602(a)(38) clearly "reveals Congress' intent that '*any income of or available for* such parent, brother, or sister *shall be included* in making [the AFDC] determination and applying such paragraph with respect to the family . . .' if the brother or sister is living with the dependent child." *Oliver v. Ledbetter,* 821 F.2d 1507, 1512 (11th Cir. 1987) (emphasis in original). *See also Gorrie v. Bowen,* 809 F.2d 508, 513-15 (8th Cir. 1987). Further, the statute explicitly states that it operates "notwithstanding [42 U.S.C.] section 405(j) . . . in the case of benefits provided under subchapter II of this chapter." As indicated earlier, section 405(j) requires that OASDI benefits be used by the representative payee for the sole benefit and use of the beneficiary and expressly prohibits OASDI benefits for the use and benefits of other resident children.

Thus, if, as plaintiff argues, the Secretary's regulations concerning AFDC benefits are in irreconcilable conflict with

---

[4]We note that district courts in this circuit have rendered conflicting decisions. *Compare Ardister v. Mansour,* 627 F. Supp. 641 (W.D. Mich. 1986) (upholding the Secretary's interpretation) *with Gibson v. Sallee,* 648 F. Supp. 54 (M.D. Tenn. 1986) (rejecting the Secretary's interpretation) (prelim. injunction - both cases).

Title II limitations on the use of OASDI benefits, then the statutory language indicating that it applies, notwithstanding section 405(j), "clearly indicates that Congress anticipated the alleged incongruence" and intended that section 602(a)(38) would prevail. *Gorrie*, 809 F.2d at 518. Once section 405(j) is made inapplicable to the situation, then it logically follows that the criminal and civil sanctions contained in 42 U.S.C. section 408 are inapplicable as well. *Id.*; *see also Huber v. Blinzinger*, 626 F. Supp. 30 (N.D. Ind. 1985).[5]

Perhaps the strongest support for plaintiff's position can be found in the inalienability provision of Title II, 42 U.S.C. § 407(a) (1983):

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Congress has also established requirements for any legislation seeking to modify the anti-alienation provision:

> No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

---

[5]Our statutory interpretation is also bolstered by the now well-settled principle of statutory construction that a reasonable interpretation of a statute by the agency to which Congress has intrusted the statute's administration is entitled to deference. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984); *see also Connecticut Dep't of Income Maintenance v. Heckler*, 471 U.S. 524, 532 (1985) ("agency's construction need not be the only reasonable one in order to gain judicial approval.").

42 U.S.C. § 407(b) (1983).

We conclude, however, that "[t]he Secretary's regulation does not subject Title II benefits to legal process . . . nor does it result in an assignment or transfer of benefits. It *requires only* that Title II benefit recipients apply for AFDC and have their incomes included in the family filing unit." *Gorrie*, 809 F.2d at 517 (emphasis added). The inclusion of this income in determining need "does not constitute a use of legal process to garnish or attach benefits." *Id.* In our view, 42 U.S.C. section 602(a)(38) does not assign or transfer Title II benefits away from the beneficiary to others, but simply mandates that OASDI income be considered in determining the overall need of a family. "To the extent that sharing of income among family members occurs after the benefits are paid to the representative payee, it is not prohibited by the anti-alienation provision. The use of Title II benefits by a representative payee is specifically governed by other provisions of Title II." *Id.* Section 602(a)(38) amended those sections; *viz.*, 20 C.F.R. §§ 404.2035 - 404.2045 (1987). *See also* 42 U.S.C. § 408(e). The anti-alienation provision was not affected.

Plaintiff further argues that the Secretary's regulations implementing DEFRA violate the principle of "actual availability." The "actual availability" principle prohibits states from counting nonexistent or unrealizable income, or income which is unavailable as a matter of law when making AFDC eligibility decisions. *Heckler v. Turner*, 470 U.S. 184 (1985). The principle "has served primarily to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients." *Id.* at 200. *See Van Lare v. Hurley*, 421 U.S. 338 (1975); *Lewis v. Martin*, 397 U.S. 552 (1970); *King*, 392 U.S. at 309.

In the present case, plaintiff argues that since Title II benefits are restricted to the sole use of the named beneficiary,

those benefits are not available to the family as a whole and cannot be considered as familial income. However, we agree with the holding in *Gorrie* that "this is not a case of a recipient's need being 'artificially depreciated,' as the availability principle forbids. Rather, it is a case of Congress exercising its power to redirect the focus of AFDC need determinations." *Gorrie*, 809 F.2d 515-16. Congress has "determined that most AFDC households share expenses relating to food and shelter, and thus authorized the use of OASDI benefits for coresident siblings." *Oliver*, 821 F.2d at 1513. Thus, we conclude, as did the courts in *Gorrie* and *Oliver*, that the Secretary's regulations do not violate the principle of "actual availability."[6]

B. *Constitutional Argument*

We begin our analysis of the constitutional issues by noting our limited and deferential standard of review. "[T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of [federal courts]." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970). " 'Governmental decisions to spend money to improve the general public welfare in one way and not another are not confided to the courts. The discretion belongs to Congress unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment.' " *Bowen*, 107 S. Ct. at 3015 (quoting *Mathews v. De Castro*, 429 U.S. 181, 185 (1976)). Our limited scope of review "is premised on Congress' 'plenary power to define the scope and the duration of the entitlement to . . . benefits, and to increase, to decrease,

[6]The plaintiff also argued below that siblings receiving OASDI benefits are not to be included in the AFDC family filing unit because those children are adequately supported by a parent and are not dependent children as defined by the statute. While not advanced on appeal, we note that two circuits have subsequently rejected those arguments. *Oliver*, 821 F.2d at 1513; *Gorrie*, 809 F.2d at 513-14.

or to terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program.' " *Bowen*, 107 S. Ct. at 3015 (quoting *Atkins v. Parker*, 472 U.S. 115, 129 (1985)). Thus, we will not disturb the economic decisions of Congress as long as Congress had a rational basis for its determinations. *See Lyng v. Castillo*, 477 U.S. 635 (1986). In sum, "the Constitution does not empower [federal courts] to second-guess . . . officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge*, 397 U.S. at 487.

1. *Due Process*

Plaintiff contends that the Secretary's regulations implementing DEFRA violate the substantive due process rights of Title II children living with AFDC families because the regulations impose on a group of children the responsibility of supporting their needy siblings in violation of the fundamental due process requirement that "legal burdens should bear some relationship to individual responsibility." *Pickett v. Brown*, 462 U.S. 1, 7 (1983) (quoting *Weber v. Aetna Casualty & Sur. Co.*, 406 U.S. 164, 175 (1972)). Initially, however, the plaintiff's due process claims "must fail because they are based on the erroneous premise that OASDI recipients enjoy a constitutionally protected right against having the amount of their benefits modified by Congress." *Oliver*, 821 F.2d at 1514. Title II recipients have no constitutionally protected interest against congressional modification of their benefits. *See Weinberger v. Salfi*, 422 U.S. 749, 772 (1975); *see also Richardson v. Belcher*, 404 U.S. 78, 80-81 (1971); *Flemming v. Nestor*, 363 U.S. 603, 608-11 (1960). Since the recipients have no protected constitutional interest, our review is, as indicated above, deferential and limited to whether the legislation amounts to arbitrary governmental action.

As indicated above, the pertinent legislative history of 42 U.S.C. section 602(a)(38) reveals that Congress, in allocating

limited public welfare funds, has determined that family members living together reasonably pool their income and resources on such items as food and housing. We conclude "that the statute is rationally related to the legislative goal of distributing limited welfare benefits to those families most in need." *Oliver*, 821 F.2d at 1515. "[I]t is rational and consistent with the purposes of the AFDC program for Congress to structure AFDC eligibility determinations in a manner that focuses on the needs of family units instead of individuals." *Gorrie*, 809 F.2d at 524. While Mrs. Bradley may disagree with Congress' rationale, federal court is not the appropriate forum in which to raise her complaints.

Finally, our conclusion that the regulations do not violate the due process rights of the Title II beneficiaries is, in our view, mandated by the Supreme Court's holding in *Gilliard* that inclusion of child support benefits and beneficiaries (another type of exclusive use income) in the family filing unit does not violate the child support recipient's due process rights. *Gilliard*, 107 S. Ct. at 3015-18. For the purposes of due process analysis, no principal distinction exists between social security benefits and child support payments.

Plaintiff further argues that the Secretary's regulations violate the due process rights of the representative payees by making the family's income depend on the payees' willingness to violate the law. However, as we earlier concluded that 42 U.S.C. section 602(a)(38) made the criminal and civil sanctions inapplicable to representative payees in this situation, it logically follows that this due process argument summarily fails. It is no longer a violation of the legal or fiduciary duties of representative payees to use OASDI benefits to meet *the shared subsistence needs* of the OASDI recipient and other coresident members of the family. *See Gorrie*, 809 F.2d at 518.

2. *Equal Protection*

Plaintiff argues that the Secretary's regulations violate equal protection rights as guaranteed by the Fifth Amend-

ment in that the regulations impose burdens on one class of Title II children, those living with other needy siblings, in an arbitrary and capricious manner. Plaintiff concedes, however, that neither a suspect classification nor a fundamental right is implicated. Therefore, the legislative classification is subject to only "rational basis" scrutiny. *See City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440-42 (1985). Thus, the legislative classification is legitimate and valid if it "rationally furthers a legitimate state purpose." *Zobel v. Williams*, 457 U.S. 55 (1982).

In this case, as indicated above, there is a clear rational basis for Congress' action. As the Court noted in *Gilliard*, the rationality of the filing unit provision lies (1) in the government's "interest in distributing benefits among competing needy families in a fair way," (2) in Congress' assumption that payments to one individual in a family are "generally beneficial to the entire family unit," and (3) " 'the common sense proposition that individuals living with others usually have reduced per capita costs because many of their expenses are shared.' " *Gilliard*, 107 S. Ct. at 3016 (quoting *Termini v. Califano*, 611 F.2d 367, 370 (2d Cir. 1979). "Although this situation may appear unfair, it does not amount to a constitutional violation." *Oliver*, 821 F.2d at 1516.

Finally, plaintiff argues that the Secretary's regulations violate the equal protection rights of the representative payees in that representative payees living in a household with AFDC recipients are required to violate their fiduciary duties while payees who do not live with AFDC recipients are not so obligated. However, as we have previously concluded that these representative payees will not be subject to liability for using OASDI benefits for *shared subsistence expenses*, plaintiff's argument necessarily fails. If Congress did create classes of representative payees, such classification is not arbitrary and, as indicated above, rationally furthers federal and state governmental interests in distributing limited funds

to the most needy families and in reducing the Nation's deficit.

III.

Finding that the federal and state family filing unit regulations are consistent with the congressional mandate contained in the Deficit Reduction Act of 1984, the Social Security Act, and the Fifth and Fourteenth Amendments to the United States Constitution, the judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

DOROTHY COLLINS, et al.,	:	C69-830
Plaintiffs,	:	ORDER
PATRICIA K. BARRY, et al.,	:	
Defendants.	:	

BATTISTI, C.J.

On January 22, 1971, an order was entered which prohibited the state and county public welfare departments from defining in a certain way the "family unit rule," which defendants employed to determine eligibility and payment levels for the Aid to Families with Dependent Children ("AFDC") program. Under that former state rule, Social Security Old-Age, Survivors, and Disability Insurance ("OASDI") or Title II income of child

beneficiaries was treated as income available to the family generally. As a result of this rule, AFDC benefits were denied or paid at reduced levels to the families of which a member was receiving OASDI benefits. Plaintiffs claimed that OASDI benefits were to be used exclusively for the intended beneficiaries, and to do otherwise would be to violate certain fiduciary duties under federal law.

Two question were raised in plaintiffs' suit: an alleged deprivation of the Fourteenth Amendment right to equal protection of the laws, and the incompatibility of the state procedure with federal social security statutes and regulations. Because of the finding that a conflict between state and federal law

existed, there was no need to reach the question of equal protection. 1/ Depending on which side one takes in the present matter, these two issues once again may or may not exist in this Court. Plaintiffs argue that these two issues do in fact remain; defendants argue that through the Deficit Reduction Act of 1984, the addition of §402(a)(38) to

---

1. Plaintiffs renew their argument based on equal protection grounds. See Plaintiffs' Motion to Show Cause 13 n.12. This appears to be another problem which was not addressed by either Congress in passing the amending legislation here under examination, or by the Executive in proposing the amendment and in implementing it. As such, the equal protection problem, though standing alone perhaps insufficient to support the holding reached today, provides further evidence to support the conclusion that Congress did not mean to repeal the various statutory provisions, cited and discussed infra, which ultimately led to the order of January 22, 1971.

Title IV of the Social Security Act definitively resolved these issues. Defendants specifically argue that in light of this statutory change, the federal-state conflict underlying the 1971 injunction no longer exists. Accordingly, defendants have moved the Court for relief from the order of January 22, 1971. On the other hand, plaintiffs have requested an order holding defendants in contempt for violation of this order.

The issue to be resolved is whether 42 U.S.C. §602(a)(38) requires recipients of OASDI benefits to be counted in the "standard filing unit" when determining AFDC benefits. Admittedly, the instant case presents a slight twist insofar as the parties and the Court must deal with

an earlier injunction prohibiting what defendants now are doing under the claimed shield of state and federal law. Nevertheless, the issue still remains as to whether the Deficit Reduction Act did indeed bring about the changes which defendants argue, and the answer to this question still requires an examination of §602(a) (38). Defendants argue that the recent statutory amendments promulgated through the Deficit Reduction Act require this inclusion. Plaintiffs argue that the amendment requires this inclusion only in certain limited circumstances. Good lawyering combined with unclear and ambiguous congressional and executive action have forced a judicial resolution to this rather complex issue.

Arguments from both sides presented to the various district courts which have dealt with the issue have produced well-reasoned opinions but at times irreconcilable results. Upon consideration of these holdings and of the excellent briefing of this issue in the matter now before the Court, 2/ defendants are hereby adjudged in contempt of this Court for having violated the terms of the

---

2. In their Motion for Relief from Judgment, defendants requested that their motion as well as plaintiff's Motion to Show Cause be set for hearing. The parties had an opportunity to present their arguments briefly to the Court during an in-chambers conference. Furthermore, excellent briefing of this matter by both sides has greatly assisted the Court in resolving this matter. Consequently, for these reasons and with the hope of expediting this present order, the Court decided that an additional formal hearing in this matter was unnecessary.

the final judgment entered in this case on January 22, 1971. Accordingly, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On January 22, 1971, a final order was issued in this matter. The case concerned families in which one or more children received OASDI benefits, provided under Title II of the Social Security Act, paid to them through a parent acting as their fiduciary (then called "trustee," now called "repre- "sentative payee"). The Director of the Ohio Department of Public Welfare (now the Ohio Department of Human Services) had promulgated and was then enforcing a "family unit rule," Ohio Public

Assistance Manual ("OPAM") §452.1, which was utilized to determined eligibility and payment levels in the AFDC program. Under the rule, the OASDI income of child beneficiaries was treated as income available to the family (i.e., parents and half-siblings) generally. As a result of this rule, AFDC benefits were denied or paid at reduced levels to needy children in the family unit who themselves did not receive OASDI benefits.

2. The Court held that the family unit rule conflicted with the language and spirit of the social security laws. The rule violated specifically 42 U.S.C. §§402(d) and 408(e), which entitle OASDI child beneficiaries to receive OASDI benefits in their own right and which

obligate their representative payee to devote the benefits to their use and benefit or face prosecution. The rule also violated the AFDC availability principle enunciated in Lewis v. Martin, 397 U.S. 552 (1970) (holding that income of stepfathers or certain non-legally obligated men could not be assumed to be available to needy children under 42 U.S.C. §602(a)(7)), by treating OASDI benefits of non-legally obligated children as available to the needy children in the family unit. The family unit rule further had the untoward effect of forcing the representative payee to violate her fiduciary relationship with the OASDI beneficiaries by using OASDI benefits to support the needy children in the family.

3. Accordingly, the Court permanently enjoined defendants "from enforcing Section 452.1 of the Ohio Public Assistance Manual as it nowreads, so as to include as 'available family income' any income which under the terms of the Social Security laws and regulations is not available to the family generally but is restricted to the use and benefit of a named beneficiary." Order, Jan. 22, 1971, at 6. This permanent injunction ran in favor of the plaintiff class, which consisted of all Ohio families in which there are both needy children and children receiving OASDI benefits.

4. On July 18, 1984, Congress passed the Deficit Reduction Act of 1984, part of which amended Title IV of the

Social Security Act (the AFDC program) by adding a new paragraph (38) to §402(a). Codified at 42 U.S.C. §602(a)(38), the new paragraph provides:

> (a) A state plan for aid and services to needy families with children must
>
> ***
>
> (38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include--
>
> (A) any parent of such child, and
>
> (B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a) [42 U.S.C. §606(a)], if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such

> paragraph with respect to the family (notwithstanding section 205(j) [42 U.S.C. §405(j)] in the case of benefits provided under title II).

5. On September 10, 1984, the United States Department of Health and Human Services promulgated a regulation interpreting 42 U.S.C. §602(a)(38). See 49 Fed. Reg. 35586 et seq. Codified at 45 C.F.R. §206. 10(a)(1)(vii), the regulation, which became effective October 1, 1984, provides:

> For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> (A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and
>
> (B) Any blood-related or adoptive brother or sister.

6. Effective October 1, 1984, the Ohio Department of Human Services adopted an AFDC "standard filing unit rule" interpreting this federal regulation. A consequence of this rule's enforcement is the defendants' adoption of a policy whereby OASDI benefits of a child paid through a representative payee are treated as income available to the family generally when determining AFDC eligibility and payment level for the entire family. Before plaintiffs' filing of their Motion to Show Cause, defendants did not seek any order from this Court to modify in any way the order of January 22, 1971, despite their conduct which, by their own admission, was contrary to the terms of that order. See Defendants' Motion for Relief from Judgment 12 [sic].

7. Defendant Patricia K. Barry, currently Director of the Ohio Department of Human Services, is responsible for the administration of the ADC program in Ohio and promulgated OPAM §4501 and Ohio Administrative Code ("OAC") §5101:1-21-011, known as "the standard filing unit rule."

8. Plaintiff Marquittius Bearden is a class member affected adversely by the new standard filing unit rule and brings this contempt action by and through her grandmother, Daisy Bearden.

9. Daisy Bearden is the grandmother of Marquittius and Marquittius' half-sister, Latonya Bearden. Latonya and Marquittius (ages 15 and 11, respectively) are daughters of Linda Bearden, Daisy Bearden's daughter,

but by different fathers.

10. Until November 1985, Daisy Bearden received AFDC benefits for both Latonya and Marquittius. That month Latonya began to receive OASDI benefits because her father had died. Daisy Bearden received these payments as Latonya's representative payee. Marquittius does not receive OASDI benefits because she had a different father.

11. Due to the operation of the standard filing unit rule, Marquittius was denied AFDC benefits because of the OASDI benefits paid to her half-sister, Latonya, through Daisy Bearden, Latonya's representa-tive payee.

12. But for the standard filing unit rule, Marquittius would have been

entitled to receive $180 per month in AFDC benefits.

13. On May 2, 1986, plaintiffs filed a Motion to Show Cause asking this Court to hold defendant Patricia K. Barry in contempt for violating this Court's previous order of January 22, 1971.

14. On May 27, 1986, defendant Barry filed a Reply to the Motion to Show Cause, arguing that the order of January 22, 1971 had expired according to its own terms, that impossibility of performance had relieved her of the injunction, and that changes in the law, specifically the enactment of 42 U.S.C. §602 (a)(38), had made the order of January 22, 1971 obsolete.

15. On June 11, 1986, defendant Barry also filed a Motion for Relief from

Judgment under Fed. R. Civ. P. 60(b) to seek a dissolution of the order of January 22, 1971 on the grounds that federal law underlying the injunction had been changed by the enactment of §602(a)(38).

16. The order of January 22, 1971 remains in full force and effect. It has not been modified or reversed. Nor has defendant Barry previously sought relief from that order and her enforcement of the standard filing until rule continues unabated.

CONCLUSIONS OF LAW

1. The permanent injunction ordered by this Court on January 22, 1971 remains in full force and effect. The addition of 42 U.S.C. §602(a)(38) to the

Social Security Act, accomplished through the passage of the Deficit Reduction Act of 1984, did not undermine the validity of such order. This amendment did not repeal, either expressly or impliedly, 42 U.S.C. §§402(d) and 408(e), the statutory basis of the order of January 22, 1971. Under these provisions, OASDI benefits paid to a representative payee in trust for a minor beneficiary cannot be deemed as income available to the family generally but are restricted to use for the sole benefit of the minor beneficiary. White Horse v. Heckler, 627 F. Supp. 848, 852 (D.S.D. 1985); Frazier v. Pingree, 612 F. Supp. 345 (M.D. Fla. 1985).

2. Reading the ambiguous language of §602(a)(38) as an implied repeal of

§§402(d) and 408(e) violates the well-established rule of construction against such implied repeals where another construction is possible. Repeals by implication are not favored, and apparently conflicting statutes should be interpreted in a way that gives effect to each. Watt v. Alaska, 451 U.S. 259 (1981); United States v. Hansen, 772 F.2d 940 (D.C. Cir. 1985), cert. denied, 106 S.Ct. 1262 (1986). Implied repeals should only be found where the manifest and clear intent of Congress so indicates. Kremer v. Chemical Construction Corp., 456 U.S. 461, reh'g denied, 458 U.S. 1133 (1982).

3. Defendant Barry's interpretation of §602(a)(38) would work an implied repeal of §§ 402(d) and

408(e). Because it is neither clear nor manifest that Congress intended to repeal §§402(d) and 408(e), this Court rejects defendant Barry's interpretation.

4. At the same time, a strong presumption attaches requiring a court to give some meaning to all statutory language. Rosado v. Wyman, 397 U.S. 397, 415 (1970) (construing "all legislative enactments to give them some meaning" in the context of potentially conflicting statutory provisions of Title II and AFDC). To attribute meaning to §602(a)(38) while at the same time retaining the meaning of §§402(d) and 408(e), the Court construes §602(a)(38) to require the inclusion of OASDI benefits of a child which are either legally available or actually made

available to the family generally by the representative payee, but not otherwise. Thus, where a representative payee actually makes a portion of a child's OASDI benefits available to the family generally, that portion is to be treated as income available to the family generally. Gorrie v. Heckler, 624 F. Supp. 85 (D. Minn. 1985). Likewise, where a parent OASDI beneficiary receives benefits through a representative payee, those benefits are to be treated as legally available to the beneficiary's children. Cunningham v. Toan, 728 F.2d 1101 (8th Cir. 1984), vacated, 105 S.Ct. 896 (1985), modified on remand, 762 F.2d 63. So construed, §602(a)(38) puts a stop to the long-standing practice which allowed families to exclude at their

option OASDI beneficiaries from the household, whether or not the benefits were actually or legally available to other family members.

5. Statutory support for this interpretation is also found at 42 U.S.C. §407, which provides that OASDI payments are neither transferable nor assignable at law or in equity and shall not be subjected to any legal process. This inalienability provision is "all-inclusive" and has been strictly construed to limit transfers of any social security benefits. Tidwell v. Schweiker, 677 F.2d 560, 567 (7th Cir. 1982), cert. denied, 461 U.S. 905 (1983). It "imposes a broad bar against the use of any legal process to reach all social security benefits." Philpott v. Essex

County Welfare Board, 409 U.S. 413, 417 (1973). Thus, the coerced transfers of OASDI benefits, which necessarily result under the standard filing unit rule, facially violate the inalienability provision of 42 U.S.C. §407(a). Congress could not have contemplated such a result through the enactment of §602(a)(38), because it did not expressly refer to §407, as required by §407(b), when allegedly amending the inalienability provision. Gorrie, supra, at 90. Compare 42 U.S.C. §659(a).

7.[sic] The standard filing unit rule also facially violates the terms of 42 U.S.C. §602(a)(38), because it ignores that provision's conditional language which incorporates by reference 42 U.S.C. §606(a)(1) and (2), which refers to "needy" children deprived of parental

support or care for various reasons. The neediness condition is incorporated in 45 C.F.R. §206. 10(a)(1)(vii) by the phrase "and otherwise eligible for assistance." The standard filing unit rule violates this condition by automatically requiring the inclusion of non-needy OASDI child beneficiaries.

7. The AFDC availability principle is also relevant to a resolution of the matter before the Court. Sec. 602(a)(38) refers to the determination of AFDC eligibility made under §602(a)(7). Historically, the words "any income" as used in §602(a)(7), and repeated in §602(a) (38), have been held to include only income that is actually and/or legally available. Heckler v. Turner, 105 S. Ct. 1138, 1147-

48 (1985); Turchin v. Butz, 405 F. Supp. 1263 (D. Minn. 1976); Elam v. Hanson, 384 F. Supp. 549 (N.D. Ohio 1974); Snider v. Creasy, 728 F.2d 369 (6th Cir. 1984). In the context of this case, OASDI benefits are clearly not legally available to the entire family by virtue of §§402(d), 408(e) and 407. Moreover, if a representa-tive payee actually makes a bene-ficiary's OASDI benefits available to others, he or she is liable for criminal penalities under §408(e). In light of the definitional limitations, defendants cannot assume existing income is automatically available to the other members of the family unit. The availability principle thus buttresses this Court's construction of §602(a)(38) as being consistent with §§402(d), 408(e)

and 407, as well as with the traditional understanding of §602(a)(7).

8. Courts should accord substantial deference to adminis-trative agencies' interpretation of statutes which they are charged to execute. Blum v. Bacon, 457 U.S. 132 (1982); Schweiker v. Hogan, 457 U.S. 569 (1982); Miller v. Youakim, 440 U.S. 125 (1979). The Court finds the most reasonable interpretation of 45 C.F.R. §206.10(a)(1)(vii) to be that it incorporates the "neediness" requirement and thus is consistent with the Court's interpretation of §602(a)(38). Even if this Court's reading of the regulation is wrong, however, the Court stands by its interpretation of the statute. While administrative interpretations should be accorded

deference, they are not controlling. Batterton v. Francis, 432 U.S. 416 (1977). In particular, an administrative agency's interpretation cannot control when there are compelling indications that it is wrong, New York State Dept. of Social Services v. Dublino, 413 U.S. 405 (1973), or when such an interpretation would change the clear language of the law, Southeastern Community College v. Davis, 442 U.S. 397 (1979). Thus, the HHS interpretation of §602(a)(38), found at 45 C.F.R. §206.10(a)(1)(vii), is not binding upon this Court, and this Court declines to defer to it to the extent that it violates 42 U.S.C. §§402(d), 407 and 408(e), as discussed above.

9. The order of January 22, 1971 is reaffirmed beacause [sic] the Court

finds that the recent amendment of the Social Security Act through 42 U.S.C. §602(a)(38) neither expressly nor impliedly repealed §§402(d), 407 or 408(e), provisions which specifically protect the OASDI benefits of child beneficiaries, nor abridged the AFDC availability principle. Thus, there are no grounds for relief from judgment under Fed. R. Civ. P. 60(b)(5) or (6).

10. For the foregoing reasons, defendant Barry is adjudged to be in contempt of this Court for having directly violated the injunction incorporated in the final order entered in this case on January 22, 1971.

11. Defendant Barry's other defenses to contempt are without merit. The order of January 22, 1971 has not expired, and defendant Barry has failed

to establish that it was either factually or legally impossible for her either to have continued to comply with that order or to have sought relief from judgment in a timely fashion.

12. The Eleventh Amendment is no bar to the enforcement of the order of January 22, 1971, and is no bar to following a remedial order. Fortin v. Commissioner of Mass. Dept. of Public Welfare, 692 F.2d 790 (1st Cir. 1982); Daubert v. Percy, 713 F.2d 328 (7th Cir. 1983), cert. Denied, 465 U.S. 1026 (1984).

O R D E R

1. Plaintiff's Motion to Show Cause is hereby granted. Defendant

Barry's Motion for Relief from Judgment is hereby overruled.

2. Defendant Barry is in contempt of Court. She shall purge herself of her contempt forthwith by bringing the ADC program in Ohio into compliance with the permanent injunctive of January 22, 1971, by maintaining compliance with the injunction at all times in the future, and by restoring lost ADC benefits (i.e., cash assistance and Medicaid coverage) to all class members who have been, are being, or will be denied any benefits under the standard filing unit rule, OPAM §4150 and OAC §5101:1-21-011, as presently written.

3. Defendant Barry shall forthwith promulgate a revised version of OPAM §4150 and OAC 5101:1-21-011 that

adds in bold print at the beginning of each: "Specifically excluded from this requirement are children receiving Title II (OASDI) benefits through a representative payee. The Title II income of a minor beneficiary shall not be deemed as income to the child's parents or other caretakers or siblings, unless actually or legally made available to them."

4. Defendant Barry shall, within 15 days of this order, submit to the Court for approval and to plaintiffs' attorneys for comment:

A. A letter to be provided to the director of each county welfare department directing strict compliance with the revised OPAM and OAC provisions and directing that each employee involved

in the administration of the ADC program be actually notified of this revised rule and the reasons for it, and including a copy of the final order entered January 22, 1971, a copy of this memorandum and order, and a copy of the revised OPAM and OAC provisions.

B. A poster informing applicants and recipients of the revised policy and a cover letter to each county welfare department director directing that at least two copies of the poster be prominently posted in each waiting area for a period of six months.

5. Defendant Barry shall, within 30 days of this order, submit to the Court for approval and to plaintiffs' attorneys for comment a plan for restoring lost ADC benefits to class

members who, since October 1, 1984, have been denied ADC benefits and who have had benefits reduced or terminated as a result of the enforcement of the standard filing unit rule. The plan shall include a procedure for identifying class members, for notifying them, for providing lost benefits to them, for providing a fair hearing process to resolve disputes; shall include a timetable for doing so within 60 days; and shall include a provision for reporting to the Court about the implementation and results of these procedures.

6. Defendant Barry shall pay plaintiffs' costs and reasonable attorney fee, application for which shall be made

after defendant Barry certified [sic] to the Court that she has accomplished all the relief ordered above.

IT IS SO ORDERED.

_____

Frank J. Battisti, Chief Judge

(3)

No. 87-2061

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

DOROTHY COLLINS, ET. AL.,
Petitioners,

v.

PATRICIA K. BARRY,
DIRECTOR OF THE OHIO
DEPARTMENT OF HUMAN SERVICES,
Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ANTHONY J. CELEBREZZE, JR.
Attorney General

JOEL S. TAYLOR
Chief Counsel

DENNIS G. NEALON
of Counsel

1680 State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

COUNSEL OF RECORD
FOR RESPONDENT

QUESTION PRESENTED BY PETITIONERS

DOES A LAWFULLY ISSUED FINAL PERMANENT INJUNCTION REMAIN ENFORCEABLE IN COMPENSATORY CIVIL CONTEMPT PROCEEDINGS UNTIL SUCH TIME AS IT IS PROSPECTIVELY VACATED IN JUDICIAL PROCEEDINGS, NOTWITHSTANDING A POST-JUDGMENT CHANGE IN A STATUTE UPON WHICH THE INJUNCTION WAS BASED?

It is Respondent's position that a more accurate statement of the issue presented is:

WHETHER AN INJUNCTION WHOSE BASIS IS FEDERAL STATUTORY LAW IS ENFORCEABLE AFTER THAT STATUTE HAS BEEN CHANGED.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTE

OTHER

STATEMENT OF THE CASE

Respondent accepts Petitioners' statement of the case.

SUMMARY OF ARGUMENT

A review on writ of certiorari is not a matter of right, but of judicial discretion and will be granted only when there are special and important reasons therefore. Sup. Ct. R. 17. This case presents no such reason for granting review.

In *Bowen v. Gilliard*, 107 S. Ct. 3008 (1987), decided this term, this Court voided a 1971 injunction effective with the enactment of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 §2640(a) (1984) ("DEFRA"). The Sixth Circuit below followed the *Gilliard* decision in this virtually identical case. Petitioner presents no reason to overturn *Gilliard.*

"Judicial deference" to legislative enactments is a long standing doctrine observed by this Court. An injunction based on statute must yield when that statute is modified.

The decision below is fair to Petitioners in that with the enactment of DEFRA, Petitioners were no longer entitled to the statutory benefits they seek. They are not entitled to compensation when they suffered no loss. Civil contempt, whose primary purpose is to compensate for loss suffered as a result of a violation of a court order, will not lie where, as here, no harm was incurred and the injunction is no longer enforceable. This long established principle need not be re-reviewed by this Court.

ARGUMENT

I. THE ISSUE PRESENTED TO THIS COURT WAS DECIDED IN BOWEN V. GILLIARD, 107 S. CT. 3008 (1987)

Buried at page 35 of Petitioner's 36 page brief is a passing reference to *Bowen v. Gilliard,* 107 S. Ct. 3008 (1987) (hereinafter "Gilliard"). Since *Gilliard* is dispositive of this case, Respondent will commence its brief discussing *Gilliard. Gilliard* makes further review of this issue before this Court unnecessary.

The present case is remarkably similar to *Gilliard.*[1] In each case, an injunction was issued in 1971, enjoining the enforcement of state rules ... t required inclusion of benefits and beneficiaries in a family filing unit for AFDC. *See Gilliard v. Kirk,* 331 F. Supp. 587 (W.D. N.C. 1971). In each case, the basis for the injunction was that the state regulation conflicted with federal law. In each case, without first seeking to modify the injunction, the states, acting in compliance[2] with DEFRA, effected rules reinstituting a standard filing unit. Further relief was subsequently sought by plaintiffs in each case and granted both retroactively to the date of the enactment of the regulations as well as prospectively.

In *Bowen V. Gilliard, supra,* this Court determined that ". . . the DEFRA amendment is constitutionally valid [and] requires reversal of both the District Courts' award of prospective relief and its award of retroactive relief." *Bowen*

---

[1] The Gilliard case arose in the context of child support as opposed to OASDI benefits, a distinction not material to the issue before this Court.

[2] *Gilliard, supra,* and the Sixth Circuit below *(Collins v. Barry,* 841 F.2d 1297 (6th Cir. 1988); *Bradley v. Austin,* 841 F.2d 1288 (6th Cir. 1988) confirm that the states' regulations were consistent with statutory changes in DEFRA. Petitioner does not challenge in this action the correctness of those rulings nor the fact that the states correctly interpreted DEFRA.

v. Gilliard, 107 S. Ct. at 3015, N. 12. The Sixth Circuit cited and followed that ruling. *See Collins v. Barry*, 841 F.2d at 1300. This Court need not redecide an issue decided just several months ago.

The essence of the Courts' decisions is to give effect to valid federal statutes on the date of the enactment. Petitioner asks this Court to ignore the fact that a constitutionally sound statute exists. Certainly, this is improper.

Giving effect to legislative enactments, known as the doctrine of judicial deference (*see e.g. Class v. Norton*, 507 F.2d 1058 (2nd Cir. 1974)),[3] is not a new concept. The leading case in this area is *Pennsylvania v. The Wheeling and Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856). In *Wheeling*, an injunction was issued requiring that a bridge be either elevated or abated since it represented an obstruction to free travel on the Ohio River.[4] Congress subsequently enacted legislation declaring the bridge to be a lawful structure, thus undercutting the basis for the injunction.[5] In

---

[3] In *Class*, the Second Circuit Court of Appeals reversed the trial court's decision to deny relief under Fed. R. Civ. P. 60(b). Defendants sought to terminate an injunction due to the enactment of a regulation by the Department of Health, Education and Welfare. Via the injunction, Defendants were ordered to comply with existing regulations requiring processing of AFDC applications within 30 days. The regulations were amended to allow 45 days for processing. The Court of Appeals determined that the principle of judicial deference was decisive and that the injunction must be dissolved. *See also, McGrath v. Potash*, 199 F.2d at 167-168 (D.C. Cir. 1952); *International Ry. Co. v. Davidson*, 65 F. Supp. 58, 59 (W.D. N.Y. 1945).

[4] Underlying the injunction was the fact that a Virginia law allowing the bridge to be built was in conflict with acts of Congress and that under supremacy clause, the Virginia legislation must fall.

[5] The main bridge was blown down in a gale wind. While the company endeavored to repair it, this action was filed in District Court. An injunction was issued to prevent the repairs but was ignored. Subsequently, motions for contempt and to dissolve the injunction were filed.

determining whether the injunction or the subsequent legislation should take precedence, the Court stated:

> If, in the meantime, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced. There is no longer any interference with the enjoyment of the public right inconsistent with law, no more than there would be where the plaintiff himself had consented to it, after the rendition of the decree. Suppose the decree had been executed, and after that, the passage of law in question, can it be doubted that the defendants would have had a right to reconstruct it? And is it not equally clear that the right to maintain it, if not abated, existed from the moment of the enactment? (*Wheeling, Supra*, 59 U.S. at 431-432.)

The doctrine of judicial deference has been continually reaffirmed by the Courts. *See, Systems Federation No. 91 v. Wright, 364 U.S. 642 (1961); Hodges v. Snyder*, 261 U.S. 600 (1923); *Gray v. Chicago, Iowa and Nebraska Ry. Co.*, 10 Wall. 454, 19 L.Ed. 382 (1870).

The present case is analogous to *Wheeling*. In each case, an injunction was issued based on a conflict between federal and state law. Likewise, amendments to federal law alleviated the conflict undercutting the basis for the injunction. Acts found unlawful under prior federal law (the basis for the injunction) were made lawful by subsequent legislation. In *Wheeling*, this Court determined that with the enactment of the legislation, the injunction could no longer be enforced. The present case was decided accordingly.

Petitioner seeks to distinguish *Gilliard* because *Gilliard* was not raised in the contempt framework. Petitioner's brief at 35. However, as the Court of Appeals below stated:

> In this case, plaintiff Collins and her class were not damaged by the defendant's actions in violation

> of the injunction. On October 1, 1984, as required by DEFRA, the Director amended Ohio law to conform with the requirements of 42 U.S.C. §602(a)(38). As of that date, plaintiff Collins and her class were no longer entitled to benefits as determined by the prior law. Therefore, they were not harmed as a result of the Director's action, since, under the law, they were receiving all the benefits to which they were entitled. *As civil contempt seeks to remedy a deprivation or a loss, and not to create additional rights,* the district court erred in finding defendant Barry in contempt and awarding a restoration of reduced or terminated benefits as a remedy. *See Gilliard,* 107 S. Ct. at 3015, n. 12 ("ruling that the DEFRA amendment is constitutionally valid requires reversal of both the district court's award of prospective relief and its award of retroactive relief.").

The fact that this case was brought as a contempt action is of no consequence and not a basis for distinguishing *Gilliard.* Contempt was merely the vehicle for placing the issue before the Court and does not affect the statutory rights of the parties.

This Court in *Gilliard* and *Pennsylvania v. Wheeling and Belmont Bridge Co., supra,* has determined that an injunction is modified by a statute effective the date of enactment of the statute. Petitioner presents no new issue for this Court to decide.

II. THE DECISION BELOW IS FAIR AND IN ACCORDANCE WITH THE LAW

Petitioners seek review of this matter to obtain welfare funds from the date of enactment of DEFRA until modification of the injunction. The decision of the lower court was fair to Petitioners in that Petitioners were not harmed by Respondent's actions.

The original injunction, attached hereto, created no additional rights to welfare benefits for Petitioners. The injunction simply enjoined Respondent from applying a state regulation that was inconsistent with federal law. The source of Petitioner's rights to benefits was not the injunction but federal statute.

When DEFRA was enacted, Petitioners were no longer entitled to those benefits under statute. Petitioners were not harmed by Respondent's failure to continue to comply with the injunction because the actions of Respondent were no longer in conflict with federal law. The source of Petitioner's rights to those benefits had changed. There was no reason for the Court to compensate Petitioners when no loss was incurred.

The decision below is also accurate and consistent with prior decisions by the courts, in addition to *Gilliard* and *Pennsylvania v. The Wheeling and Belmont Bridge Co., supra.*

It is well settled that the invalidity of a court order generally is not a defense in a criminal contempt proceeding alleging disobedience of the order. *Pennsylvania v. Local Union 542,* 552 F.2d 498, 505-506 (3rd Cir. 1977); *Fernos-Lopez v. United States District Ct.,* 599 F.2d 1087, 1091 (1st Cir. 1979); *United States v. Seale,* 461 F.2d 345, 361-362 (7th Cir. 1972). Contrary to the general rule regarding criminal contempt cases, a finding of civil contempt is invalidated if the underlying order is invalidated. *Squillacote v. Local 248, Meat and Allied Food Workers,* 534 F.2d 735 (7th Cir. 1976). *See also, United States v. United Mine Workers,* 330 U.S. 258, 295 (1947). Whether the adjudication of contempt survives the avoidance of the underlying order depends on the nature of the contempt decree. If the contempt is criminal, it stands; if it is civil, it falls. *Ager v. Jane C. Stormont Hospital and Training School for Nurses,* 622 F.2d 496, 499 (10th Cir. 1980).

In addressing this issue, the Fifth Circuit Court of Appeals stated:

> It is a well established principle that an order of civil contempt cannot stand if the underlying order on which it is based is invalid. In contrast, the validity of a criminal contempt adjudication resulting from the violation of a court order does not turn on the meritoriousness of that order.
>
> [I]n a criminal contempt the validity of the order allegedly disobeyed is not open to question in the slightest degree. Disobedience constitutes a contempt even though the order is set aside on appeal or otherwise becomes ineffective. In contrast, civil contempt falls with the order if it turns out to have been erroneously wrongfully issued. *United States v. United Mine Workers,* 1947, 330 U.S. 258, 294, 67 S. Ct. 677, 91 L.Ed. 884; *Worden v. Searls,* 1887, 121 U.S. 14, 7 S. Ct. 814, 30 L.Ed. 853; *Gompers v. Buck's Stove & Range Co.,* 1911, 221 U.S. 418, 451, 31 S. Ct. 492, 55 L.Ed. 797.

ITT Community Development Corp. v. Barton, 569 F.2d 1351 (5th Cir. 1978). A party held only in civil contempt by way of compensation to his adversary will be absolved of liability if the court order was invalid or erroneous. The adversary should realize no gain from orders to which he was not entitled. *Norman Bridge Drug Co. v. Banner,* 529 F.2d 822, 828 (5th Cir. 1976).

The purposes of compensatory civil contempt are not furthered when a party is rewarded for something he is not otherwise entitled to as opposed to compensated for actual loss. Whether an injunction is void *ab initio* or rendered unenforceable by a change in law, the result is the same. With the enactment of DEFRA, the statutory basis upon which the injunction was issued no longer existed and was therefore unenforceable.

The lower court correctly determined that Petitioners were not damaged by the violation of the injunction. The cases relied upon support the finding of the Court that civil contempt does not create additional rights for Petitioners. This case

is consistent with existing case law and offers no new issues for this Court to decide.

CONCLUSION

The issue presented to this Court was addressed this term in *Gilliard, supra,* and offers no important question of federal law nor is the decision in any way in conflict with applicable decisions of this Court. This Court should decline to accept this Petition on Writ of Certiorari and allow the decision of the Sixth Circuit Court of Appeals to stand.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General

JOEL S. TAYLOR
Chief Counsel
Ohio Attorney General
1680 State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

CERTIFICATE OF SERVICE

I hereby certify that three (3) true and accurate copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were sent via regular U.S. Mail this 12th day of July, 1988 to Robert Bonthius, 1223 West 6th Street, Cleveland, Ohio 44113.

JOEL S. TAYLOR
Chief Counsel
Ohio Attorney General

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DOROTHY COLLINS, on behalf of her minor children, JAMES COLLINS, DOROTHY COLLINS and WARREN COLLINS,	)	
Plaintiffs	)	
v.	)	
DENVER L. WHITE, Director of the Department of Public Welfare, State of Ohio	)	CASE NO. C 69-830
and	)	
STEVEN MINTER, Director of the Cuyahoga County Welfare Department,	)	
Defendants	)	

Before: Celebrezze, Circuit Judge; Battisti, Chief Judge, District Court; and Lambros, District Judge

This is an action to enjoin the enforcement of Section 452.1 of the Ohio Public Service manual, as currently interpreted, providing standards for measuring the eligibility of families for Aid to Families with Dependant Children (AFDC) funds.[1]

The plaintiff, Mrs. Collins, receives $178.00 monthly in Social Security Old-Age, Survivors, and Disability Insurance (OASDI) benefits for herself individually and as trustee for James and Dorothy, the two children she has by her late

---

[1] Section 452.1, in relevant part, states that in determining eligibility, ". . . all available income for each member of the family unit" shall be deducted, and that "When income is in excess of the total allowance, the family is ineligible."

husband.[2] Additionally, however, she has a third child, Warren, who is not entitled to these benefits and who is with no other means of support. Her application for aid for Warren from the Cuyahoga County Welfare Department was denied, and this decision was upheld by the State Department of Public Welfare. Both decisions were based on the view that the four people—Mrs. Collins, James, Dorothy, and Warren—constitute a single family unit, and that consequently the $178.00 must be considered as being available to all four members. The effect of this is to deny welfare payments for the support of Warren and to force Mrs. Collins to provide this support from funds which she says are intended for the exclusive use of James and Dorothy, thus breaching her fiduciary duty as their guardian.

After her appeal to the State Public Welfare Department was denied, Mrs. Collins came to this Court for a declaratory judgment that the State procedure under Section 452.1 violates the United States Constitution. Jurisdiction was noted under 28 U.S.C. §§2201 and 1343(3), and a three-judge court ordered convened under 28 U.S.C. §2281, with hearing and oral argument waived by agreement between the parties. The class plaintiffs seek to represent is a proper one under F.R.C.P. Rule 23, one consisting of families in which there are both needy children and children receiving OASDI benefits.

Plaintiffs have raised two questions: (1) an alleged deprivation of the Fourteenth-Amendment right to equal protection of the laws: (2) the incompatibility of the State procedure with Federal Social Security statutes and regulations. All essential facts have been agreed between the parties by stipulation; thus it is only to these two issues that this Court must address itself.

There may be at present no vested constitutional right to receive public assistance; yet, at the very least, there is

---

[2] Of this $178.00, apparently $60.00 is paid to Mrs. Collins for her own benefit, the other $118.00 for the use of James and Dorothy.

implicit in every program of public assistance a vested right under the Constitution to equality and fairness of operation. See *Smith v. King,* 277 F.Supp. 31, at 40 (M.D. Ala., 1967, reaff'd *sub nom. King v. Smith,* 392 U.S. 309, 1968); *Rothstein v. Wyman,* 303 F.Supp. 339, at 346, (S.D. N.Y. 1969). If it is an impermissible discrimination to draw a distinction where no relevant difference exists, it must be discriminatory as well to refuse to draw a distincition where the circumstances manifestly justify one. The defendants argue that the plaintiffs have received treatment no different from that accorded to "every other applicant family requesting ADC eligibility and assistance" and that the source of income does not affect the computation of family income and need for AFDC purposes. This Court need not reach the question of whether this constitutes a denial of equal protection, however, in view of the conflict between the State regulation and applicable Federal law.

The heart of the defendants' argument is their contention that Mrs. Collins and her three children constitute a single family unit, so that money made available to one may be considered as available to all. Nonetheless, it is clear that in an important sense the three children—although born of the same mother and although members of the same household—must constitute something other than a single family unit. James and Dorothy have inherited certain rights from their father, rights to which they—and not Warren—are entitled. One of these is the right to receive benefits based upon their father's payments to the Social Security System. By law these benefits belong to them individually, not to the family as a whole; and to spend the money for the support of anyone other than James and Dorothy is punishable as conversion under 42 U.S.C. §408(c).

The situation clearly is analogous to that presented in *Lewis v. Martin,* 397 U.S. 552 (1970), in which the United States Supreme Court held that the mere presence of a "man assuming the role of a spouse" is not a valid ground for assuming the availability in fact of his income for the support of children in that household. Since, the Court reasoned, a man is under no legal obligation to support children not

his own, his income may not be considered in determining their eligibility for AFDC benefits absent a showing of actual contributions by him. Similarly, here James and Dorothy have no duty to support their half-brother Warren; thus, any money they receive from OASDI or any other source is by law theirs individually and not to be considered as available income for the family. This is clear from the wording of 42 U.S.C. §402(d), which states that the children of a person covered by OASDI are entitled to receive such benefits in their own right. As representative payee, their mother is in a fiduciary position, and must devote this money solely to their use and benefit (20 C.F.R. §404.1603) or face prosecution for conversion under 42 U.S.C. §408(e).

In this regard, we note as well State Letter No. 1088, dated September 25, 1970, from Commissioner of Social and Rehabilitative Service John L. Costa of the Department of Health, Education, and Welfare. Noting that this has been a "recurring issue," Commissioner Costa states that a child's OASDI benefits "are appropriately used only for the current needs of the child." He continues:

> "In view of the statutory requirement that a child's OASDI benefits be for his 'use and benefit' alone, the representative payee may not be required to use such benefits for other members of the child's family. Thus, if a child's monthly OASDI benefit exceeds his AFDC payment, the payee must have the option of removing the child together with his income from the AFDC family budget unit."

A State Letter from the Commissioner does not have the authority of a binding regulation; it does indicate, however, official Social Security policy and, as such, must be considered as one of the "official issuances to the States" which help determine ". . . whether State plans (including plan amendments and administrative practices under the plans) originally meet, or continue to meet, the requirements for approval. . . ." 45 C.F.R. §201.2. Its weight, therefore, while not decisive, does merit some consideration as to whether, in the view of the agency administering Social Security

programs, there exists a conflict between the Federal and State policies.

In the instant case such conflict hardly could be more obvious: the State of Ohio assumes as available family income, money which according to the Social Security statutes, regulations, and official policy letters, manifestly may not be used for anyone other than the specifically-named beneficiaries. When such a conflict exists between State law or procedure and Federal statutes or regulations made under them, there is no question that the Federal provisions must prevail. Constitution, Article VI; Clause 2, *Free v. Bland,* 369 U.S. 663 (1962); *Glover v. Mitchell,* 319 Mass. 1, 64 NE 2d 648 (1946).

Therefore, this Court finds that on its face Section 452.1 of the Ohio Public Service Manual conflicts with the clear and expressed meaning and intent of the Social Security Act and relevant regulations, and that this in turn constitutes a violation of Article VI, Clause 2 of the Constitution. The defendants are enjoined permanently from enforcing Section 452.1 of the Ohio Public Assistance Manual as it now reads, so as to include as "available family income" any income which under the terms of the Social Security laws and regulations is not available to the family generally but is restricted to the use and benefit of a named beneficiary. The defendants shall remove the plaintiffs James and Dorothy Collins from their family public assistance budget, retroactive to March, 1969, and shall reduce the budget accordingly in determining the eligibility of the family for AFDC benefits. In addition, the defendants shall compute and restore to the plaintiffs James and Dorothy Collins past benefits for which they are entitled to compensation. The same shall be done for all others similarly situated; that is, wherever eligibility of one or more children for OASDI benefits has been used as the basis for the denial of AFDC funds for other children in the same household unit.

It is so ordered.

Anthony J. Celebrezze

Frank J. Battisti

Thomas D. Lambros

No. 87-2061

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

DOROTHY COLLINS, *etc.*,
Petitioners

vs.

PATRICIA K. BARRY,
Director of the Ohio Department of
Human Services,
Respondent

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

ROBERT H. BONTHIUS, JR.
Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-1900
Counsel of Record for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

I.

The question presented herein was neither presented in Gilliard nor decided by the Court in footnote 12 of its opinion therein.

Respondent Barry contends that the question presented herein was decided by this Court in footnote 12 of its opinion in Bowen v. Gilliard, 107 S.Ct. 3008 (1987). But, she has read far too much into that footnote.

In Gilliard, a direct appeal, the principle question presented was whether a provision of the Deficit Reduction Act of 1984 ("the DEFRA amendment") violated the due process or taking clauses of Fifth Amendment. 107 S.Ct. at 3011. No question concerning the civil contempt authority of the district court was presented by the facts of the appeal or

by the parties; 1/ none was raised by the Court itself.

While it is true that, in footnote 12, this Court reversed the district court's award of retroactive relief, the reversal was mandated by the unique circumstances of that case; circumstances which did not present the civil contempt question presented herein. In Gilliard the rights of the appellees had been adjudicated in 1971 under the then-existing statute and a permanent injunction had been entered. 107 S.Ct. at 3012; Gilliard v. Craig, 331 F. Supp. 587 (W.D.N.C. 1971), aff'd, 409 U.S. 807 (1972); Gilliard v. Kirk, 633 F. Supp. 1529, 1543-42 (W.D.N.C. 1986), rev'd, 107 S.Ct. 3008 (1987). After the enactment

---

1/
The Gilliard appellants made this plain in their reply brief at 16-17.

of the DEFRA amendment, the appellees sought to obtain further relief. 107 S.Ct. at 3012; 633 F. Supp. at 1532-33. The district court found that statutory rights of the appellees had been changed in 1984 by the DEFRA amendment but that the DEFRA amendment violated the Fifth Amendment rights of the appellees. 107 S.Ct. at 3014; 633 F. Supp. at 1548-63. The district court, then, granted retroactive relief because it found that the DEFRA amendment had violated appellees' Fifth Amendment rights; not because appellees' rights under the injunction had been violated.

The unique circumstances in Gilliard thus mandated that this Court reverse the award of retroactive relief because of its determination that the constitutional rights of the appellees

had not been violated. 107 S.Ct. at 3015 n.12. No other basis was presented upon which the retroactive award could have been affirmed. The Court was not required to consider the question presented herein.

The instant case is quite different. Here, the district court held respondent Barry in civil contempt for her direct violation of the rights of the petitioners under the lawfully issued, unvacated 1971 permanent injunction. The award of damages was to compensate petitioners for the violations of the rights adjudicated in that injunction. Thus, the petition for writ of certiorari squarely presents a question not addressed by the Court in Gilliard at footnote 12.

II.

In Wheeling Bridge this Court recognized that an enjoined party may be held in civil contempt and that compensatory damages may be awarded against it for its violation of a lawfully issued, unvacated injunction, notwithstanding post-judgment legislation.

Respondent Barry reads Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421 (1856), to support the Sixth Circuit's decision herein. But, she has misunderstood that opinion.

In Wheeling Bridge an injunction was prospectively dissolved on defendants' motion because of post-judgment legislation. Defendants' bridge reconstruction, though previously enjoined, was thus permitted to continue. Wheeling Bridge, then, establishes the power of a court to prospectively modify a final decree in response to post-judgment legislation. Pasadena City Bd.

of Ed. v. Spangler, 427 U.S. 424, 437 (1976); System Federation No. 91, Railway Employees' Dept. v. Wright, 364 U.S. 642, 646 and 650 (1961). 2/

But Wheeling Bridge does not hold, as respondent Barry would have it, that a post-judgment change in a statute underlying the injunction renders the injunction unenforceable in civil contempt proceedings and that it thus prevents a court from awarding compensatory damages for violations of the injunction which occur prior to its vacation. On the contrary, in Wheeling Bridge the Court made it plain that it had the discretion to hold defendants in

---

2/ None of the opinions cited by respondent Barry at 2-3 of her brief in opposition support her understanding of Wheeling Bridge. All support the proposition stated here by petitioners.

contempt for pre-vacation violations of the injunction and to grant plaintiff's motion for attachment and sequestration. A majority of the Court declined to do so under the circumstances of the case, but four members firmly believed that the attachment should have been awarded against defendants for their disobedience to the injunction. Thus, Wheeling Bridge does not protect the scofflaw. 3/

It is this discretion, the discretion of a court to award compensatory damages in civil contempt, which the Sixth Circuit has foreclosed. The Sixth Circuit here reversed as a

---

3/ Moreover, Wheeling Bridge lends strong support to the propositions stated and arguments made by petitioners in the petition for writ of certiorari at 15, 18-19, and 22.

matter of law, not for abuse of discretion. It thus foreclosed the right of the district court to exercise its discretion whether to hold respondent Barry in civil contempt. There is no support in Wheeling Bridge for that result. Indeed, that result conflicts with the approach taken by this Court in Wheeling Bridge.

III.

Respondent Barry has cited no opinion which support the Sixth Circuit's holding herein.

The balance of the opinions cited by respondent Barry, those at 5 and 6 of her brief in opposition, are cited in support of propositions of law which are inapposite both to the facts and the question presented herein. Those opinions concern different facts and a

different question: the limits of a court's civil contempt authority where the order which has been violated was erroneously or unlawfully issued in the first place. Here, however, the permanent injunction which respondent Barry admittedly violated was correctly and lawfully issued. The question presented herein thus concerns the civil contempt authority of a district court where a correctly and lawfully issued order is violated before it is prospectively vacated.

CONCLUSION

For these reasons and for those in the petition, a writ of certiorari should be granted.

Respectfully submitted,

ROBERT H. BONTHIUS, JR.
Legal Aid Society of
Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-1900

Counsel of Record for
Petitioners

August, 1988